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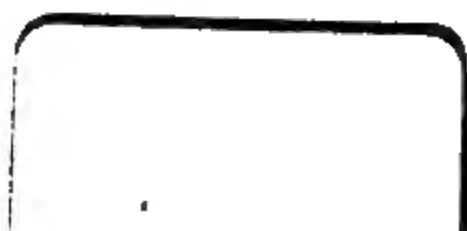
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LAW AND PRACTICE
OF
SUMMARY CONVICTIONS.

2 Volumes

PALEY'S
LAW AND PRACTICE
OF
SUMMARY CONVICTIONS

UNDER THE
SUMMARY JURISDICTION ACTS, 1848—1884;
INCLUDING
PROCEEDINGS PRELIMINARY AND SUBSEQUENT TO CONVICTIONS,
AND THE
RESPONSIBILITY OF CONVICTING MAGISTRATES AND THEIR OFFICERS.
WITH THE
Summary Jurisdiction Rules, 1886, and Forms.

THE SEVENTH EDITION.

BY
WALTER H. MACNAMARA,
OF THE INNER TEMPLE, BARRISTER-AT-LAW;
REGISTRAR ATTACHED TO THE RAILWAY AND CANAL COMMISSION.

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PREFACE

TO THE SEVENTH EDITION.

Thirteen years have elapsed since the publication of the last edition of this work, and during that considerable interval of time many important Statutes have been passed, Rules issued, and Decisions given, affecting the procedure, jurisdiction, and duties of justices sitting in petty sessions. In the present edition the statute law has been brought down to the end of the session 55 & 56 of the Queen, and the judicial decisions to September, 1892, are also included.

W. H. M.

October, 1892.

**.* The First Edition of this work was published in 1814.
Mr. James Dowling edited the Second Edition in 1827.
Mr. Edmund E. Deacon edited the Third Edition in 1838,
Mr. Henry T. J. Macnamara edited the Fourth Edition in
1856, and the Fifth Edition in 1866. The Sixth Edition
was prepared by the present Editor and was published
in 1879.*

TABLE OF CONTENTS.

INTRODUCTION.

PART I.

MATTERS ANTECEDENT TO CONVICTION.

CHAPTER I.

OF THE JURISDICTION OF JUSTICES.

| | PAGE |
|---|------------|
| 1. Of the Jurisdiction in General | 16 |
| 2. Of the Local Limits thereof, as to the Residence of the Justice | 18 |
| 3. Of the Local Limits thereof, as to the Place of the Offence | 28 |
| 4. Of the Jurisdiction qualified as to Number, Description and Interest of Justices | 37 |
| 5. Of the Qualifications as to Priority of Jurisdiction ... | 53 |
| 6. Of the Qualification as to Conditions precedent ... | <i>ib.</i> |
| 7. Of the Qualifications as to the Nature of the Offence | 54 |
| 8. Of the Limits thereof as to Amount | 57 |
| 9. Of the Limits thereof as to Time | 58 |
| 10. Of Delegation of Authority | 66 |

CHAPTER II.

PROCEEDINGS BEFORE JUSTICES PRELIMINARY TO CONVICTION OR DISMISSAL.

| | |
|--|----|
| 1. On the General Effect of the Summary Jurisdiction Acts, 1848 and 1879 | 67 |
| 2. Information or Complaint | 72 |

| | PAGE |
|--|------------|
| 3. Declining Jurisdiction | 87 |
| 4. Issuing Summons | 91 |
| 5. Apprehension, Appearance or Default of Defendant ... | 101 |
| 6. Proceedings after Appearance | 109 |
| 7. Witnesses | 119 |
| Compelling Attendance of | <i>ib.</i> |
| Competency of | 120 |
| Examination of | 124 |
| 8. Proofs necessary to support Charge | 129 |
| 9. The Defence | 145 |
| 10. Reply | 164 |
| 11. Hearing of Second Information before decision of First | 164 |
| 12. Dismissal | 165 |

PART II.
OF THE CONVICTION.

CHAPTER I.

| | |
|---|-----|
| Of the Qualities of Convictions in General... | 168 |
|---|-----|

CHAPTER II.

| | |
|---|-----|
| Of the Principles by which they are construed ... | 182 |
|---|-----|

CHAPTER III.

THE SEVERAL PARTS OF A CONVICTION.

| | |
|---|-----|
| 1. General Form | 188 |
| Negating Exemptions | 198 |
| 2. The Judgment, Form of | 199 |
| 3. Several Penalties in one Judgment | 206 |

TABLE OF CONTENTS.

ix

| | PAGE |
|--|------|
| 4. The Punishment of Forfeiture | 216 |
| 5. Appropriating the Penalty | 222 |
| 6. Awarding Costs | 227 |
| 7. Conclusion | 229 |

PART III.

PROCEEDINGS SUBSEQUENT TO CONVICTION.

CHAPTER I.

| | |
|--|------------|
| 1. Of giving a Copy of the Conviction | 231 |
| 2. Of Drawing and Amending | 237 |
| 3. Of returning to the Sessions | <i>ib.</i> |

CHAPTER II.

OF PROCEEDINGS IN EXECUTION.

| | |
|--|-----|
| 1. Recognizance against future Offence | 239 |
| 2. Of Distress | 243 |
| 3. Disposal of and accounting for Fines | 257 |
| 4. Commitment for Punishment, or in Default of Distress or Payment | 263 |

CHAPTER III.

ON APPEAL TO SESSIONS.

| | |
|--|-----|
| 1. In what Cases Appeal lies | 282 |
| 2. Notice and Recognizance | 287 |
| 3. To what Sessions, Hearing, &c. | 297 |

CHAPTER IV.

I. OF STATEMENT OF CASE UNDER 20 & 21 VICT. c. 43.

| | PAGE |
|--|------------|
| 1. Provisions of Statute | 323 |
| 2. Cases within | 325 |
| 3. Recognizance | 326 |
| 4. Transmitting Case | <i>ib.</i> |
| 5. Delivery of Copies of Case | 328 |
| 6. Who to begin | 329 |
| 7. The Argument | <i>ib.</i> |
| 8. Amendment | 330 |
| 9. Costs | 331 |
| 10. <i>Certiorari</i> issuing, though Case stated | 332 |

II. OF STATEMENT OF CASE UNDER 42 & 43 VICT. c. 49, s. 33.

| | |
|------------------------------------|-----|
| 1. Stating Case under | 332 |
| 2. Time for Stating | 333 |
| 3. Cases within Statute | 334 |
| 4. Mandamus to State a Case | 335 |

CHAPTER V.

OF THE REMOVAL BY HABEAS CORPUS AND CERTIORARI.

| | |
|---|-----|
| 1. <i>Habeas Corpus</i> | 336 |
| 2. <i>Certiorari</i> , where the proper Proceeding | 348 |
| Regulations as to Time, Notice and Recogni- | |
| zance | 361 |
| Direction, Effect and Return | 367 |
| Proceedings in Queen's Bench Division after | |
| Return of the Conviction | 372 |
| Execution after Affirmance in Queen's Bench | 381 |

PART IV.

OF THE RESPONSIBILITY AND INDEMNITY OF MAGISTRATES
AND THEIR OFFICERS — EFFECT OF CONVICTION IN
COLLATERAL PROCEEDINGS.

CHAPTER I.

PROCEEDINGS AGAINST JUSTICES FOR ACTS DONE IN THE
EXERCISE OF SUMMARY JURISDICTION.

| | PAGE |
|---|------|
| 1. Where an Action will lie | 385 |
| 2. Formalities in Actions against Justices | 402 |
| 3. Evidence, Damages and Costs in such Actions | 415 |
| 4. Proceedings by Criminal Information | 418 |



CHAPTER II.

OF ACTIONS AGAINST CONSTABLES AND OTHER OFFICERS.

| | |
|---|-----|
| Protection by Magistrate's Warrant | 424 |
|---|-----|

CHAPTER III.

| | |
|---|-----|
| Effect of Conviction in Collateral Proceedings | 437 |
|---|-----|



APPENDIX.



I. STATUTES.

| | PAGE |
|---|------|
| The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) | 441 |
| The Justices' Protection Act, 1848 (11 & 12 Vict. c. 44) | 463 |
| The Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45) | 467 |
| 20 & 21 Vict. c. 43 (Stating case for opinion of Court) | 473 |

| | PAGE |
|--|------|
| 35 & 36 Vict. c. 26 (Affidavit of Justices) | 476 |
| The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) | 477 |
| The Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24) . | 513 |
| The Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43) | 516 |
| The Probation of First Offenders Act, 1887 (50 & 51 Vict. c. 25) ... | 520 |
| The Interpretation Act, 1889 (52 & 53 Vict. c. 63) | 521 |

II. RULES.

| | |
|---|-----|
| The Summary Jurisdiction Rules, 1886 | 524 |
| The Crown Office Rules, 1886 | 529 |
| The Summary Jurisdiction Rule, 1891 | 536 |

III. FORMS.

| | |
|---|-----|
| I. APPEAL | 537 |
| II. SCHEDULE OF FORMS TO SUMMARY JURISDICTION RULES, 1886 | 539 |
| 1. In Summary Proceedings other than for Civil Debts ... | 541 |
| 2. In Proceedings for the Recovery of a Civil Debt ... | 568 |
| III. SCHEDULE OF FORMS TO CROWN OFFICE RULES, 1886. | |
| 1. Certiorari... .. | 574 |
| 2. Criminal Information | 581 |
| 3. Mandamus | 582 |
| 4. Writ of Subpoena before Justices at Petty Sessions ... | 584 |
| 5. Habeas Corpus | 586 |
| IV. SCHEDULE OF FORMS TO SUMMARY JURISDICTION RULE, 1891. | |
| 1. Under Reformatory Schools Act, 1866 | 589 |
| 2. Under Industrial Schools Acts | 591 |
| 3. Under Elementary Education Act, 1876 | 593 |

| | |
|--------------|-----|
| INDEX | 595 |
|--------------|-----|

INDEX TO CASES CITED.

[REG., REX.—All Cases under the above names will be found in the Alphabetical Order of the DEFENDANTS' names.]

| A. | PAGE |
|---|---|
| Abbott, R. r..... | 139, 358 |
| Aberdare Canal Co., R. r.... | 44, 349 |
| ——— L. B. v. Hammett ... | 161, 181 |
| Abergavenny Union, R. r. | 305 |
| Abergele, R. r. | 365, 370 |
| Adams r. Masters | 149 |
| Addis, Ex parte | 221, 272, 275 |
| Agar v. Athenæum Assurance Society | 41 |
| Agard v. Cavendish | 17 |
| Agnew v. Jobson..... | 410 |
| Aiken, R. r. | 109, 112 |
| Albon r. Pike | 161 |
| Alcock r. Andrews | 431 |
| ——— R. r..... | 47 |
| Aldridge, Ex parte ... | 126, 129, 177 |
| ——— r. Haines..... | 390 |
| Allan r. Preece | 424 |
| Allardice r. Robertson | 401 |
| Allen, R. r. ... | 48, 50, 55, 148, 231, 234, 301, 302, 305, 360, 363 |
| ——— v. Sparkhall..... | 114, 141 |
| ——— r. Worthy | 154, 209 |
| Alleyne, R. r. | 354 |
| Allington, R. r. | 92, 100, 419 |
| Allison, Ex parte | 42, 43 |
| ——— Re..... | 347 |
| All Saints (Southampton) R. r. | 19 |
| Amos, R. r. | 267 |
| Anderson v. Hamlin | 78 |
| ——— R. r. | 31 |
| Anderson's case | 336 |
| Andrew Wilson, The | 57 |
| Anglesey J.J., R. r..... | 295 |
| Apothecaries Co. v. Burt | 212 |
| Arlecdon, R. r..... | 309 |
| Arnold v. Dimsdale . | 21, 35, 63, 66, 244 |
| ——— v. Gaussen | 35, 66 |
| ——— v. Hamell..... | 410, 411 |
| ——— R. r..... | 40 |
| Arthur v. Commissioners of Sewers | 358 |

| | PAGE |
|---|------------------|
| Ashburn, R. r..... | 90 |
| Ashdown r. Curtis | 326 |
| Ashersmith v. Drury | 28 |
| Ashley's case | 41, 371 |
| Ashton, Re | 240 |
| ——— R. r..... | 63, 204, 289 |
| Askew r. Hayton | 369, 370, 371 |
| Aston, Ex parte..... | 240, 267 |
| ——— v. Perkes | 405 |
| ——— R. r..... | 89, 399 |
| ——— Re..... | 372 |
| Atcheson r. Evcritt | 126 |
| Atkins r. Kilby..... | 246, 280, 426 |
| Atkinson r. Hornby | 402 |
| Atlee v. Backhouse..... | 57 |
| Att.-Gen. v. Bowman..... | 123 |
| ——— v. Burges..... | 81 |
| ——— v. Le Revert ... | 175, 177, 340 |
| ——— v. M·Clean | 212 |
| ——— v. Radloff... | 121, 122, 162 |
| ——— v. Riddle..... | 81 |
| ——— r. Siddon | 81, 123 |
| ——— v. Sillem | 122 |
| Austin, Ex parte..... | 233 |
| ——— r. Olsen | 61 |
| ——— R. r. | 100, 172, 195 |
| Australasia (Colonial Bank of) r. Willan | 355 |
| Austrey, R. v. | 22 |
| Aves, R. r. | 108 |
| Ayrton v. Abbott | 391 |

| B. | |
|--|--------------------------------|
| Bach, R. v. | 169 |
| Backhouse v. Bishopwearmouth (Churchwardens of) | 153, 347, 373 |
| Bacon v. Ashton | 173 |
| Badger, R. r..... | 86, 160, 181, 370, 377, 419 |
| Bagg's case | 91 |
| Bailey and Collier, Re..... | 347, 354 |
| Baines, R. r. | 178, 338, 371 |

| | PAGE | | PAGE |
|--|----------------------------------|---|--------------------|
| Baker v. Cave | 22 | Bessell v. Wilson..... | 104, 107, 111, 392 |
| — Ex parte..... | 346 | Bessett, Ex parte | 272 |
| — v. Townsend | 55 | Bidwell, R. v. | 73, 177 |
| Ballinger v. Ferris | 432 | Biggins, R. v. | 112, 113, 117 |
| Banks v. Goodwin | 326 | Biggs, R. v. | 404 |
| Barber v. Nottingham Ry. Co. | 72, 374 | Billings v. Prinn..... | 40 |
| Barker v. Davis | 306 | Binney, R. v..... | 318, 354 |
| — v. Midland Railway Company | 162 | Bird v. Constable | 406 |
| — R. v. | 233, 235 | — v. Ganston | 407 |
| Barnard v. Gostling | 213 | Birnie v. Marshall | 149, 152 |
| Barnardo, R. v..... | 340, 348 | — R. v. | 72 |
| Barnes v. Chipp | 54 | Biron, R. v. | 399, 400 |
| — R. v..... | 275 | Bissex, R. v..... | 83, 172 |
| — v. White | 175, 205, 244 | Blackawton, R. v. | 292 |
| Barnett v. Cox..... | 409 | Blackburn (Mayor of) v. Parkinson | 161 |
| Barons v. Luscombe..... | 246, 433 | — R. v. | 153, 347, 373 |
| Barret, R. v. | 59, 109, 113, 222, 383 | Blackpool Board of Health v. Bennet | 31 |
| Bartholomew v. Carter | 410 | Blake v. Beech | 72, 361 |
| — v. Kirwood..... | 91, 93 | Blankley v. Winstanley | 35, 36 |
| — v. Wells..... | 80 | Blanshard, R. v. | 89 |
| Barton v. Bricknell...205, 388, 392, 416 | | Blatcher v. Kemp | 278, 433 |
| — R. v. | 205 | Blathwayt, R. v. | 350, 359 |
| Basingstoke, R. v..... | 364 | Bleasdale, R. v. | 212 |
| Bass, R. v. | 65 | Bloxam, R. v. | 362 |
| Bassett v. Godschall | 398 | Blues, Re ...284, 285, 289, 372, 384 | |
| Basten v. Carew | 83, 103, 169, 172, 187, 234, 390 | Bluet v. Needs..... | 132 |
| Batchelor, R. v. | 341 | Bodenham, R. v..... | 354 |
| Bath (Recorder of), R. v. | 282 | Bodmin JJ., R. v. | 399 |
| Batkin, Re..... | 152, 347, 373 | Bolton, R. v. ...72, 73, 87, 135, 144, 346, 354, 358, 374 | |
| Battye v. Gresley | 40 | — (Recorder of), R. v..... | 89 |
| Bavin v. Hutchinson | 384 | Bonaker v. Evans | 93 |
| Baylis v. Strickland..... | 150, 354 | Bond, R. v. | 40 |
| Beadle, R. v. | 331 | — v. Rust | 435 |
| Beard v. Perry | 59 | Bonham's case..... | 44 |
| Beckley v. R. | 43 | Booth v. Clive | 410 |
| Becquet v. Macarthy | 91 | — R. v. | 424 |
| Bedingham, R. v. | 80 | Boothroyd, Re | 220, 223 |
| Bedwell, R. v..... | 284 | Borron, R. v. | 420 |
| Beeching, Ex parte ...123, 343, 346 | | Bosanquet v. Woodford..... | 19 |
| Beeley v. Wingfield | 56 | Bosley v. Davies | 81 |
| Bell v. Oakley | 431 | Boteler, R. v..... | 22, 90, 245 |
| Bellamy, R. v..... | 61, 113, 230 | Bott v. Ackroyd .229, 232, 233, 392 | |
| Bellasis v. Hannant | 330 | Boughey, R. v..... | 362 |
| Bell Cox v. Hakes | 348 | Boughton, R. v. | 40 |
| Belton, R. v..... | 302 | Boulton, R. v. | 354 |
| Benn, R. v..... | 21, 92, 94, 245 | Bowdler's case..... | 268 |
| Bennett v. Benham | 373 | Bowman v. Blyth..... | 238, 298, 303 |
| Bent, R. v. | 181 | Boyce v. Higgins..... | 79 |
| Berkeley, R. v. | 353, 354 | Boyle v. Sacher | 100 |
| Berkley v. Thompson..... | 98 | Brackenbridge, R. v. | 88, 155 |
| Berkshire JJ., R. v. | 63 | Bradford Union v. Clerk of Peace | 170, 447 |
| Berry v. Henderson | 209 | Bradlaugh v. Clarke | 258 |
| — R. v..... | 83, 84, 109, 307 | — Ex parte | 365 |

XV

C.

| | PAGE |
|--|---------------------------|
| Campbell <i>v.</i> Strangeways..... | 289 |
| Canadian prisoners' case... | 236, 336, 339, 341 |
| Candlish <i>v.</i> Simpson | 35 |
| Capel <i>v.</i> Child | 91 |
| Carnarvon JJ., R. <i>v.</i> ... | 89, 109, 310, 313, 349 |
| Carpenter <i>v.</i> Mason | 181 |
| Carr, R. <i>v.</i> | 92 |
| Carrick-on-Suir JJ., R. <i>v.</i> | 109 |
| Cartworth, R. <i>v.</i> | 354 |
| Cashiobury, R. <i>v.</i> | 282, 349, 370, 377 |
| ———— <i>v.</i> Morgan | 78 |
| Cathcart <i>v.</i> Hardy | 130, 198 |
| Catherall, R. <i>v.</i> ...133, 171, 181, 192, 221, 273 | |
| Caudle <i>v.</i> Seymour . | 83, 84, 103, 128 |
| Cave <i>v.</i> Mountain | 73, 389, 405, 416 |
| Chaddock <i>v.</i> Wilbraham ... | 223, 280 |
| Chaffey, R. <i>v.</i> | 321 |
| Chambers <i>v.</i> Smith..... | 289 |
| Chandler <i>v.</i> Horne | 111 |
| ———— R. <i>v.</i> ...28, 41, 97, 140, 180, 183, 192, 201, 433 | |
| Chandler's case..... | 131, 229 |
| Chaney, R. <i>v.</i> ...117, 233, 267, 271 | |
| ———— <i>v.</i> Payne...169, 180, 233, 235 | |
| Chantrell, R. <i>v.</i> | 305, 355, 377 |
| Chaplin <i>v.</i> Levy | 63 |
| ———— <i>v.</i> Robinson | 326 |
| Charlesworth, R. <i>v.</i> | 89 |
| Charleton <i>v.</i> Alway | 395, 427 |
| Charter <i>v.</i> Greame ...134, 145, 150, 169, 175, 181, 197, 218, 233, 235, 236, 238 | |
| Chaveney, R. <i>v.</i> | 168 |
| Cheltenham Commissioners, R. <i>v.</i> | 44, 48, 154, 354 |
| Cheshire JJ., R. <i>v.</i> ...172, 236, 373 | |
| Cheshire Lines Committee, R. <i>v.</i> | 21 |
| Chester and Holyhead Railway Co., R. <i>v.</i> | 354 |
| Chipp, R. <i>v.</i> | 180, 191 |
| Christie <i>v.</i> St. Luke, Chelsea... | 282, 331 |
| ———— <i>v.</i> Unwin..... | 72 |
| Christopherson <i>v.</i> Lotinga..... | 40 |
| Church-Knowle, R. <i>v.</i> | 101 |
| Cinque Ports JJ., R. <i>v.</i> | 108 |
| Claridge <i>v.</i> Evelyn | 66 |
| Clark, Ex parte | 46 |
| ———— R. <i>v.</i> | 215, 228 |
| ———— <i>v.</i> Smith..... | 337 |
| ———— <i>v.</i> Woods | 25, 275, 428 |
| Clarke, Re..... | 341, 344 |
| ———— R. <i>v.</i> ...99, 113, 117, 143, 198 | |

| | PAGE |
|--|---------------|
| Deverell, R. v. | 245 |
| De Vines' case..... | 372 |
| Devon (JJ. of), R. v. | 64, 290, 316 |
| Dews v. Riley | 25 |
| Deybel's case..... | 196, 340 |
| D'Eyncourt, R. v. | 226 |
| Dickinson, R. v. | 88, 373, 377 |
| —— v. Brown | 281, 372 |
| —— v. Fletcher | 160 |
| Dime's case | 48, 344 |
| Dimes v. Grand Junction Canal Co. | 44 |
| Dimpsey, R. v. | 220 |
| Diss Urban Sanitary Authority v. Aldrich | 326 |
| Dixon v. Wells | 58, 94, 107 |
| Dobbyn, R. v. | 191 |
| Dodson, R. v. | 150, 422 |
| Doe v. Bridges..... | 161 |
| —— v. Bristol and Exeter Rail. Co. | 72 |
| —— v. Sutton | 63 |
| Donohoe v Thompson..... | 396 |
| Donovan v. Brown | 329 |
| Dorchester JJ., R. v. | 22 |
| Dorset JJ., R. v. | 148 |
| Doswell v. Impey | 390 |
| Dover v. Child..... | 438 |
| Dowell v. Benningfield | 76 |
| Downey's case | 384 |
| Downing v. Capel | 409 |
| Drake, R. v. | 175, 213, 216 |
| —— v. Gough | 63 |
| Draper v. Spearing | 81 |
| Drury, R. v. | 155 |
| Dudley Gas Co. v. War- mington | 76 |
| Dugdale v. The Queen | 286 |
| Duncan v. Toms | 112 |
| —— v. Topham..... | 63 |
| Dunn, R. v. | 239, 368 |
| Durham JJ., R. v. | 90, 94 |
| Dutton v. Atkins..... | 108 |
| Dyer, R. v. | 91 |

E.

| | |
|---------------------------|---------------|
| Eardley, R. v. | 167 |
| East Dean v. Everett..... | 80 |
| —— Looe, R. v. | 35 |
| Eaton, R. v. | 169, 238, 360 |
| Eddleston v. Barnes | 208 |
| Eden's case | 340 |
| Edgecombe v. Rodd | 55 |
| Edmonds, R. v. | 379 |

M.

| | PAGE |
|---------------------------------------|-------------------------|
| Edwards, R. v.... | 63, 64, 71, 77, 186 |
| —— v. Ferris | 396, 416 |
| —— v. Hodges | 39 |
| —— v. Roberts | 326 |
| Eggington, Ex parte | 123, 278, 337 |
| —— v. Mayor, &c., of Lichfield ... | 279, 403, 427 |
| Ellershaw, Re | 323 |
| Elliott v. Thompson | 362 |
| Ellis, R. v. | 218 |
| —— v. Kelly | 329 |
| Elmy, Re | 233, 271 |
| Elrington, R. v. | 156, 438 |
| Elwell, R. v. | 203, 217, 273, 340, 368 |
| Ely v. Moule | 244 |
| —— JJ., R. v. | 63, 229, 258, 289, 318 |
| Embleton v. Brown | 31 |
| Essex JJ., R. v. | 28, 291, 292, 313, 316 |
| Evans, R. v. | 113, 376 |
| —— v. Hemingway | 330 |
| —— v. Wills | 226 |
| Exeter JJ., R. v. | 324, 477 |
| —— (Mayor of) v. Heaman | 131 |
| Eyre, R. v. | 294 |
| —— v. Woodfin | 249 |
| Eyres & Bond, R. v. | 380 |

F.

| | |
|--|------------------------|
| Farewell, R. v. | 353, 354 |
| Farmer, R. v. | 97, 376 |
| Farrant, R. v. | 48 |
| —— v. Thompson | 249 |
| Farringdon, R. v. | 311 |
| Fawcett v. Fowlis | 390 |
| Fell, Re | 233, 236 |
| Feltham v. Terry..... | 429 |
| Fergusson v. Kinnoull | 22 |
| Fernley v. Worthington | 415 |
| Fielding, R. v. | 419, 422 |
| Finnis, R. v. | 22 |
| Flavell, R. v. | 120 |
| Fletcher, Re..... | 269 |
| —— R. v. | 83, 109, 218, 339, 361 |
| —— v. Calthorp, 125, 177, 178, 180, 183 | |
| —— v. Wilkins | 428 |
| Fletton, Ex parte (Overseers of)..... | 321 |
| Flintsh. JJ., R. v. | 89 |
| Flockwold, R. v. | 316 |

b

| | PAGE | | PAGE |
|-----------------------------|------------------|------------------------------|--------------------|
| Flounders, Re | 363 | Goodall, R. v. | 317 |
| Flower v. Allan | 97 | —— v. Lowndes | 55 |
| Follett v. Koetzow | 163 | Goodenough, R. v. | 363 |
| Ford, R. v. | 244, 383 | Goodrich, R. v. | 89, 99 |
| Forrest, R. v. | 40 | Gosden v. Elphick | 432 |
| Foster v. Hall | 167 | Grace v. Clinch | 289 |
| Foulger v. Steadman | 151 | Grant, R. v. | 375 |
| Foulkes, Ex parte | 269 | Gray, Re | 125 |
| Fourth City Society v. East | | —— R. v. | 181 |
| Ham | 110, 334 | —— v. Cookson | 233, 390, 391 |
| Fowler, R. v. | 354 | Great Charte v. Kennington | 44, |
| —— v. Reg. | 161 | | 48 |
| Foxhall v. Barnet | 416 | Great Marlow, R. v. | 40, 53 |
| Foxham v. Tything | 44 | Great Northern Railway Co. | |
| Freegard v. Barnes | 433 | v. Inett | 326, 331 |
| Freeman v. Read | 63, 282, 318, | v. Kennedy | 162 |
| | 319, 398, 406 | Great Yarmouth, R. v. | 44, 89 |
| Frewen v. Hastings B. of H. | 349 | Grece v. Hunt | 61 |
| Fry v. Moore | 100 | Green, R. v. | 91, 171, 180, |
| Fulder, Ex parte | 75, 280 | | 183, 379 |
| Fuller, R. v. | 72, 78, 82, 130, | —— v. Bucklechurch | 22 |
| | 178, 186 | Griffin, R. v. | 38, 77 |
| Fullers v. Fotch | 390 | Griffith v. Harries | 223 |
| | | Griffiths, R. v. | 112 |
| | | Grimes, Ex parte | 245 |
| | | Groenvelt's case | 272 |
| | | Groome v. Forrester | 205, 274, |
| | | | 390 |
| | | Gudridge, R. v. | 44 |
| | | Guerin, R. v. | 123 |
| | | Guthrie v. Ford | 279 |
| | | | |
| | | H. | |
| | | Hadley v. Baxendale | 416 |
| | | Hale, R. v. | 379 |
| | | Hall, R. v. | 96, 117, 125, 138, |
| | | | 175, 198, 217, 273 |
| | | —— v. Clarke | 176 |
| | | Hamilton v. Walker | 164 |
| | | Hammersmith Rent - charge, | |
| | | Re | 21, 91, 93 |
| | | Hammond, Re | 169, 372 |
| | | —— R. v. | 44, 48, 204 |
| | | —— v. Bendyshe | 21, 93 |
| | | Hampton v. Rickard | 42 |
| | | Hamstall Ridwore, R. v. | 21, |
| | | | 22, 40 |
| | | Hancock v. Somes | 22, 156 |
| | | Handsley, R. v. | 47 |
| | | Hann, R. v. | 423 |
| | | Hanson, R. v. | 282, 283, 349 |
| | | Hants JJ., R. v. | 228, 229, 245, |
| | | | 317, 319, 381 |
| | | Hardy v. Ryle | 62, 63, 64, |
| | | | 65, 403 |
| | | Hardyman v. Whitaker | 213 |

G.

| | |
|-------------------------------|----------------|
| Gage, R. v. | 114 |
| Gaisford, R. v. | 48, 49 |
| Galliard v. Laxton | 101, 106, |
| | 278 |
| Gamble, R. v. | 294, 305 |
| Gardner's case | 372 |
| Garrett v. Middlesex JJ. | 290, 292 |
| Gaskin, R. v. | 91 |
| Gay v. Matthews | 318, 424, 425 |
| Gelan v. Hall | 75, 101, |
| | 114, 385 |
| Gellibrand, Re | 126 |
| Geswood, Re | 129, 144, 177, |
| | 204, 337 |
| Gibbs v. Stead | 244 |
| Gilberdike, R. v. | 364 |
| Giles v. Hutt | 162 |
| Gillyard, R. v. | 354 |
| Gimbert v. Coyney | 278, 411 |
| Glamorgansh. JJ., R. v. | 110, 288, |
| | 334, 363, 364 |
| Glossop, R. v. | 127, 137, |
| | 169, 235 |
| Gloucester Board of Health v. | |
| Chandler | 327 |
| Gloucestersh. JJ., R. v. | 43, 63, |
| | 124, 298 |
| Glynne, R. v. | 313 |
| Godin v. Ferris | 403 |
| Godolphin, R. v. | 75, 280 |
| Goff's case | 221, 275 |

| | PAGE |
|---------------------------------|---------------------------------|
| Hareby, R. v. | 72 |
| Hargreaves v. Diddam | 147 |
| —— v. Taylor | 21 |
| Harman, R. v. | 359 |
| Harper v. Carr | 21, 91, 429 |
| Harpur, R. v. | 77, 134, 218 |
| Harrington, R. v. | 361 |
| Harris, R. v. | 202 |
| Harrison, R. v. | 189, 204, 366 |
| Harrop v Bayley | 292 |
| Hartington, R. v. | 310 |
| Hartley, Re | 245 |
| —— R. v. | 208 |
| —— v. Hooke | 351 |
| —— Wintney Union, R. v. | 72 |
| Harvey, R. v. | 310 |
| Harwood, R. v. | 92, 423 |
| Hatfield (Little), R. v. | 319 |
| Hatton's case | 38 |
| Hawker v. Field | 321 |
| Hawkins, R. v. | 264 |
| Hawks, R. v. | 202 |
| Haylock v. Sparke ... | 388, 391, 392, 402, 406, 415 |
| Haynes v. Hayton | 260 |
| Hayward, Ex parte | 238 |
| Hazeldine v. Grove | 395, 409 |
| Hazell, R. v. | 174, 186, 196 |
| Hearne v. Garton | 80, 81, 160 |
| Heber, R. v. | 92, 423 |
| Helier v. Benhurst | 19 |
| Hellier, R. v. | 318, 321, 355 |
| Hellingley, R. v. | 309 |
| Helps, R. v. | 272 |
| Henderson v. Preston | 269, 280, 435 |
| Hendon, R. v. | 298 |
| Hendry v. Biers ... | 425 |
| Henley, R. v. | 50 |
| Hereford, Re Mayor of | 44 |
| Herefordsh. (JJ. of), R. v. ... | 21, 27, 46, 63, 288, 364 |
| Hermann v. Seneschal | 410 |
| Hern v. Nichols | 81 |
| Herrington, R. v. | 155, 156 |
| Hertford Union v. Kimpton ... | 161 |
| Herts, R. v. | 42 |
| —— JJ., R. v. | 46, 298, 306, 362 |
| Hewitt v. Cory | 59 |
| Hickling, R. v. | 42 |
| Hicks, R. v. | 76 |
| Higham, R. v. | 42, 63, 97, 309 |
| Highmore, R. v. | 129 |
| Hill v. Bateman | 264, 426 |
| —— v. Thorncroft | 69 |
| Hinckley, R. v. | 88, 313 |
| Hindley v. Haslam | 159 |

| | PAGE |
|--|--------------------------------|
| Hodgson, R. v. | 191, 332, 354 |
| Holborn Guardians v. Chertsey Union | 315 |
| Holborn Union, R. v. | 21 |
| Holden, R. v. | 439 |
| Hollingworth v. Palmer ... | 33, 186, 411, 413 |
| Hope v. Evered | 434 |
| —— v. Hope | 286 |
| Hopwood, Ex parte | 99, 354 |
| Horley v. Rogers | 101, 410 |
| Horn v. Thornborough ... | 409, 411 |
| Hoseason, R. v. | 45, 219, 422 |
| Houghton JJ., R. v. | 439 |
| Houseman, Ex parte | 358 |
| Howard v. Gosset | 426 |
| Howarth, R. v. | 40 |
| Howe, R. v. | 365, 439 |
| Howell v. Wynne | 81 |
| Hoye v. Bush | 270 |
| Hube, R. v. | 215, 351 |
| Hudson v. M' Rae | 54, 147, 181 |
| Huggins, R. v. | 90 |
| Hughes, Ex parte | 245, 338 |
| —— R. v. | 42, 107, 245 |
| —— v. Buckland | 409 |
| Hulcott, R. v. | 173 |
| Hunt, R. v. | 361 |
| —— v. Andrews | 146 |
| Huntingdonsh. JJ., R. v. ... | 47, 232, 234, 240, 245, 289 |
| Huntley, R. v. ... | 175, 318, 320, 321 |
| —— v. Luscombe | 123 |
| Huntsworth, R. v. | 152, 153 346, 373 |
| Harrell v. Wink | 275 |
| Hutchings, R. v. | 157, 167 |
| Hutchinson v. Lowndes ... | 233, 268 395 |
| Hyde, R. v. | 321, 355 |

I.

| | |
|-----------------------------------|--------------|
| Ingham, R. v. | 90, 162, 400 |
| Ipswich (Recorder of), R. v. | 282 |
| Irving v. Wilson | 429 |

J.

| | |
|-------------------------|-----------------------|
| Jacklin v. Fytche | 412 |
| Jacomb v. Dodgson | 76 |
| James, R. v. | 274, 275, 315, 356 |
| —— v. Saunders | 408 |
| —— v. Swift | 413 |
| —— v. Vane | 59 |

| | PAGE |
|--------------------------------|-------------------------|
| Jarvin, Ex parte..... | 317 |
| Jarvis, R. v. | 132, 177 |
| Jay v. Halksworth | 21 |
| Jeanes v. Wilkins | 249 |
| Jefferies, R. v. | 129, 175, 201 |
| Jeffreys, R. v. | 128 |
| Jenkyns v. Garsford | 229 |
| Jennings, R. v. | 137 |
| Johnson, Ex parte... .. | 40, 229, 232, 290 |
| —— R. v..... | 79, 95, 109, 190 |
| —— v. Colam | 17, 33, 109 |
| —— v. Reid..... | 196 |
| —— v. Smith | 404 |
| Jones, R. v. | 73, 176, 414 |
| —— v. Bird | 411 |
| —— v. Chapman..... | 401, 424, 433 |
| —— v. Gooday..... | 405, 409 |
| —— v. Gurdon | 38 |
| —— v. Johnson | 246 |
| —— v. Owen | 73, 397 |
| —— v. Vaughan | 426, 428 |
| —— v. Williams | 66, 236, 408 |
| Jory v. Orchard | 428 |
| Jukes, R. v. | 174, 177, 183, 351, 377 |
| Julius v. Bishop of Oxford ... | 41 |
| Justice v. Gostling | 198, 439 |

K.

| | |
|--|-------------------------|
| Kaye, R. v..... | 351, 362 |
| Kayley, R. v. | 153 |
| Keane v. Reynolds | 373, 426, 439 |
| Keighley, R. v. | 177 |
| Keir v. Leeman | 55 |
| Kelly v. Lawrence..... | 98, 270 |
| Kelsall v. Tyler | 162 |
| Kendall, R. v. | 309 |
| ———— v. Wilkinson ... | 246, 285, 311 |
| Kendillon v. Maltby | 401 |
| Kennard v. Simmons | 277 |
| Kenney v. Hutchinson | 63 |
| Kent JJ., R. v..... | 291, 297, 309, 364, 410 |
| —— Treasurer of, R. v. | 179 |
| Kenyon, R. v. | 369 |
| Kestevan JJ., R. v..... | 89, 313 |
| Keyn, R. v. | 31 |
| Kiddy, R. v..... | 83, 103, 127 |
| Killett, R. v. | 144 |
| Kine v. Evershed | 410 |
| King's Lynn (Recorder of), R. v. | 176 |

| | PAGE |
|------------------------------|-------------------------|
| Kingston-on-Thames, R. r.... | 21, 245 |
| Kingswinford, R. r. | 245 |
| Kennersley r. Orpe..... | 54 |
| Kinning v. Buchanan..... | 93 |
| Kinning's case | 21, 93 |
| Kirby r. Simpson..... | 392, 401, 404, 407, 409 |
| Kirkin v. Jenkins | 74 |
| Kitchen r. Shaw..... | 17, 184, 315 |
| Kite, Ex parte..... | 41 |
| —— & Lane's case | 34 |
| Knight v. Halliwell | 330 |
| Knowlden, Reg. v. | 373 |
| Kynaston, R. r. | 25 |

L.

| | |
|--|--------------------|
| Labalmondiere v. Addison ... | 66 |
| _____ v. Frost ... | 22, 171, 201 |
| Lalor v. Bland | 392, 397 |
| Lambarde, R. v. | 326 |
| Lambeth, R. v. | 294 |
| _____ Highway of (Surveyor of), R. v. | 320 |
| Lammas, R. v. | 199, 201 |
| Lancash., R. v. | 289, 298, 364 |
| Lancaster Ry. Co. v. Heaton | 44 |
| _____ JJ., R. v. | 287 |
| Lang v. Gale | 62 |
| Langridge v. Lynch | 318 |
| Lannock v. Brown..... | 250 |
| Law, R. v. | 22 |
| Lawrenson v. Hill | 392, 394 |
| Layard v. Ovey | 673 |
| Layton, R. v. | 220 |
| Leary v. Patrick | 274, 391, 412, 415 |
| Led v. Charington | 435 |
| Leatt v. Vine..... | 147, 150 |
| Ledgard, R. v. | 22 |
| Lee, R. v. | 47, 50, 376 |
| Lee Conservancy v. Tottenham Board | 328 |
| Leads and Bradford Railway Co., R. v. | 58 |
| Leeds JJ., R. v. | 293 |
| Le Feuvre v. Miller | 282 |
| Legg v. Pardoe | 147, 149 |
| Leicestersh. (JJ. of), R. v. ... | 154, 293, 294, 310 |
| Leicester U. Authority v. Holland | 148, 152 |
| Leighton, R. v. | 349 |
| Leominster, R. v. | 292 |
| Levermore, R. v..... | 370 |

INDEX TO CASES CITED.

xxi

| | PAGE |
|---|--------------------|
| Lewis, Ex parte | 399, 400 |
| —— R. v. | 125, 177, 180 |
| Lidster v. Borrow | 409 |
| Lightfoot, R. v. | 97 |
| Limpsey, R. v. | 223 |
| Lindsay v. Leigh. | 170, 233 |
| Lindsey JJ., R. v. | 294, 350 |
| Linford v. Fitzroy ... | 21, 388, 392 |
| Liston, R. v. | 370, 377 |
| Little, R. v. | 116, 141, 183 |
| Littlechild, R. v. | 82, 118, 121, 212 |
| Liverpool Gas Co. v. Everton | 287 |
| ——— v. West Derby | 298 |
| ——— (Mayor of), R. v. ... | 352 |
| ——— (Recorder of), R. v. ... | 88, 89, 292 |
| Llanbelig, Re | 362 |
| Llandulph, R. v. | 32 |
| Llanfaethly, R. v. | 306 |
| Llanfillo JJ., R. v. | 148 |
| Llangenny, R. v. | 309 |
| Llangian, R. v. | 192 |
| Llanwinio, R. v. | 40, 229 |
| Llewellyn, R. v. | 176 |
| Lloyd, R. v. | 144, 169, 170, 172 |
| Lock v. Selwood | 228, 236, 249, 320 |
| Lockhart v. St. Alban's Corporation | 334 |
| Lomas, R. v. | 168, 172, 349 |
| London Corporation, R. v. | 226 |
| ——— County Council v. West Ham | 315 |
| ——— JJ., R. v. | 167, 283, 322 |
| Londonderry, R. v. | 376 |
| L. & N. W. Rail. Co. v. R. | 44, 314 |
| London Tramways Co. v. Bailey | 163 |
| Long, R. v. | 323, 358 |
| Looker v. Halcomb. | 183 |
| Lord, Re | 40, 372 |
| —— R. v. | 378 |
| Lort v. Hutton. | 240 |
| Lovesy v. Stallard | 152 |
| Lovet, R. v. | 210, 419 |
| Lowe, Ex parte | 63, 289 |
| Luton Board of Health v. Davis. | 21, 325 |

M.

| | |
|--------------------------------|---------|
| Macclesfield, R. v. | 301 |
| M'Dougal v. Patterson | 41 |
| Machen, R. v. | 60, 155 |
| M'Intosh v. Ld. Advocate | 326 |

| | PAGE |
|--|---|
| Mahon, R. v. | 158 |
| Mainwaring, R. v. | 59 |
| Malland, R. v. | 257 |
| Mallinson, R. v. | 95, 181 |
| Manchester Railway Co., R. v. &c., Rail. Co. v. Wood. | 364, 702 |
| ——— and Leeds Railway Co., R. v. | 33, 186, 349 |
| Mann v. Davers | 117, 390 |
| Mannering, Ex parte. | 154 |
| Margate Pier Co. v. Hannam, | 27, 389 |
| Markham, Ex parte | 323 |
| Marlborough, Ex parte (Duke of) | 419 |
| Marriott, R. v. | 132 |
| ——— v. Shaw. | 209, 213, 214 |
| Marsden, R. v. | 431 |
| Marsh, R. v. | 127, 180, 181 |
| Marshall v. Murgatroyd. | 31 |
| Martin, Ex parte. | 17, 184 |
| —— R. v. | 42, 43, 177, 192 |
| —— v. Pridgeon | 75, 86, 134, 197 |
| Martins v. Upcher | 412 |
| Martyr, R. v. | 94 |
| Mason v. Barker | 238, 413, 415, 416 |
| —— v. Bibby. | 97, 99 |
| Masper v. Brown. | 438 |
| Massey v. Johnson | 65, 391, 403 |
| Masters, Re | 268 |
| Mathews v. Carpenter. ... | 151 |
| Matthews, Re | 340 |
| —— R. v. | 210 |
| Maulden, R. v. | 171 |
| Mawgan (Inhab. of), R. v. ... | 72 |
| May, Ex parte | 21 |
| —— R. v. | 312 |
| Mayer v. Harding | 50, 327 |
| Mayhew v. Locke | 268, 404 |
| Mellor v. Denham | 328 |
| —— v. Leather | 433 |
| Mersey Docks Co. v. Cameron | 282 |
| Metropolitan Police v. Bell ... | 224 |
| ——— Railway Co. v. Turnham | 22 |
| Michell v. Brown | 81, 162, 197 |
| Middlehurst, R. v. | 177 |
| Middlesex, JJ., R. v. ... | 63, 64, 289, 290, 293, 300, 306, 312, 362 |
| ——— (Sheriff of), R. v. ... | 341, 346 |
| Middleton, R. v. | 66 |
| Midgeley, R. v. | 310 |
| Midlam, R. v. | 157, 231, 380, 381 |
| Midleton v. Gale | 78 |

| | PAGE |
|-------------------------------------|------------------|
| Migotti v. Colvill | 62, 277 |
| Miles, R. v. | 438 |
| Millard, R. r. | 72, 82, 83 |
| Milledge, R. r..... | 48 |
| Miller v. Seare..... | 168 |
| Mills v. Collett..... | 73, 389 |
| Milner, R. r..... | 190 |
| Milnes r. Bale..... | 84 |
| Milton r. Green | 430 |
| Milward v. Caffin | 275 |
| Mirehouse, R. r..... | 80 |
| Mitchell v. Forster..... | 63 |
| ———— r. Foster | 99, 289 |
| ———— v. Torup | 81 |
| Monkleigh, Ex parte | 93, 125 |
| Monmouth (JJ. of), R. r..... | 44, 81, 294, 311 |
| ———— Mayer of, R. r. ... | 89 |
| Montgomerysh., R. r...307, 312, 360 | |
| Moore v. Smith | 318, 331 |
| Morant r. Taylor..... | 60, 71, 76, 315 |
| Morden v. Porter..... | 78, 221, 407 |
| Morgan, Ex parte..... | 316 |
| —— R. v. | 32 |
| —— c. Brown | 215 |
| —— v. Edwards | 327 |
| —— v. Hedger..... | 198 |
| —— r. Leach | 413 |
| —— v. Palmer | 408 |
| Morice, R. v..... | 192 |
| Morley and others, R. r. | 351 |
| —— Re..... | 229 |
| —— R. v. | 178, 198 |
| —— v. Stocker..... | 256, 257 |
| Morrell v. Martin | 249 |
| Morris, R. r..... | 438 |
| Mortlock, R. v. | 320 |
| Moscatti r. Lawson | 112 |
| Mould v. Williams | 344, 390 |
| Muir v. Hoare | 33, 324 |
| Mullins v. Collins | 81 |
| Mumford v. Hitchcock | 327 |
| Murphy v. Ryan | 147 |
| Murray v. Thompson | 220 |
| Mussett r. Burch..... | 147 |
| —— R. v. | 152 |
| Musson, R. r. | 31, 267 |
| Myers, R. v. | 47, 278 |

N.

| | |
|--------------------------|----------|
| Nash v. Reg..... | 257 |
| Nash's case..... | 340, 369 |
| Nelmes v. Hedges | 63 |
| Nelson, R. v. | 378 |
| Nesbitt, R. v. | 25 |
| Nestor v. Newcombe | 492 |

| | PAGE |
|-----------------------------|--------------------|
| Neville, R. v. | 382 |
| Newbold v. Coltman | 395 |
| Newborough, Lord, R. v.... | 170, 358 |
| Newcombe, R. v..... | 245 |
| Newman v. Hardwicke..... | 63, 269 |
| Newport Bridge Co., Re..... | 54 |
| Newton, Ex parte | 337 |
| —— R. v..... | 75, 103 |
| —— v. Chaplin | 112 |
| —— Ferrers, R. v. | 21, 189 |
| Newton's case | 345 |
| Nicholls v. Hall | 331 |
| Nicholson v. Booth..... | 74 |
| Nixon v. Nanney..... | 73, 176 |
| Norwich, Mayor of | 44 |
| Norris v. Smith | 410 |
| North, R. v. | 177, 198 |
| —— Bierly, R. v..... | 317 |
| Novello v. Ludlow | 162 |
| Nunn, Re' | 34 |
| Nunneley, R. v.... | 152, 346, 373, 375 |

O.

Onley v. Gee.....84, 194
Ormerod v. Chadwick171, 172
Oxfordsh. JJ., R. v.....137, 213,
292, 298, 303

P.

| | |
|---------------------------------|---------------------|
| Padbury, R. v. | 237, 310 |
| Padwick, R. v. | 318 |
| Page v. Pearce..... | 63, 289 |
| Paget, R. v. | 243 |
| Pain, R. v. | 178, 183 |
| Painter v. Liverpool Gas Co.... | 21, |
| | 93, 245, 249 |
| —— R. v. | 88 |
| Paley v. Birch | 147 |
| Palmer v. Allen | 293 |
| —— v. Forsythe | 370 |
| —— R. v. | 420 |
| Panton v. Williams..... | 410 |
| Parker v. Nottingham Ry. Co. | 373 |
| —— R. v. | 245 |
| Parrington v. Moore | 411 |
| Parton v. Williams | 250, 425, |
| | 432 |
| Partridge v. Naylor | 213, 214 |
| Pawlett, R. v. | 308 |
| Payne v. Uxbridge | 283 |
| —— R. v. | 121, 202, 205, 217, |
| | 228, 274 |
| Peacock v. Bell | 187 |
| —— v. The Queen | 63, 326 |

| | PAGE |
|--|--|
| Pearcy, R. v. | 313 |
| Pearse, R. v. | 144 |
| Pearson, R. v. | 149 |
| Pease v. Chaytor ... | 64, 87, 89, 152, 153, 159, 347, 373, 389, 392, 432 |
| Peckham, R. v. | 61, 183, 185 |
| Pedgreft v. Chevallier | 230 |
| Pedler, R. v. | 153 |
| Peerless, Re | 22, 28, 33, 40, 195, 270 |
| Pembrokesh., R. v. ... | 298, 311, 317 |
| Pembleton, R. v. | 181 |
| Pennegoes and Machynlleth, R. v. | 360 |
| Penney v. Slade | 40 |
| Peppercorn v. Hofman | 250 |
| Percy, R. v. | 399 |
| Pereira, R. v. | 197 |
| Perham, Ex parte | 82, 95 |
| Perkins, v. Proctor | 390 |
| Peterborough, R. v. | 301, 312 |
| Union v. Stamford | 315 |
| Petitmangin, R. v. ... | 47 |
| Phelps v. Prew | 306 |
| Phillimore, R. v. | 399 |
| Pickersgill v. Palmer | 65 |
| Pickford, R. v. | 60, 96 |
| Picton, R. v. | 126, 175 |
| Pilcherd v. Stafford | 154, 209 |
| Pilgrim, R. v. | 305 |
| Pilkington v. Riley | 413 |
| —— R. v. | 245 |
| Pinney, R. v. | 421 |
| Poor Law Commissioners, R. v. ... | 349 |
| Portsmouth JJ., R. v. | 154, 209 |
| Potts v. Cumbridge | 60, 96 |
| Power v. Wigmore | 324 |
| Prangley, Re | 63 |
| Pratt, Re | 88, 313 |
| —— R. v. | 88 |
| Prestidge v. Woodman | 406 |
| Preston, R. v. | 42, 99, 172, 373 |
| Price v. Messenger | 429 |
| —— R. v. | 42, 60, 70, 191, 504 |
| Prickett v. Greatrex | 240, 272, 411, 412 |
| Priest, R. v. | 152, 175 |
| Prosser v. Hyde | 64, 238, 282, 290, 298 |
| Pryme v. Brown | 63 |
| Pudding Norton, Re (Over- seers of) | 349, 358 |
| Pullen, R. v. | 143, 192, 382 |
| Purday, R. v. | 307, 317, 359 |
| Purkis v. Huxtable | 330 |

| R. | PAGE |
|--|----------------------------|
| Rabbits, R. v. | 172 |
| Rackham v. Bluck | 123 |
| Radcliffe v. Bartholomew | 62 |
| Radford v. Briggs | 141 |
| Radnorsh. JJ., R. v. | 170, 171, 172, 181, 236 |
| Raffles, R. v. | 323, 330 |
| Ralph v. Hurrell | 86, 134 |
| Ramsden, Re | 38, 278 |
| Ramshay, Ex parte | 93 |
| Rand, R. v. | 47 |
| Randale, R. v. | 40 |
| Ranger v. G. W. Ry. Co. | 322 |
| Ransley, Ex parte | 139 |
| Ratt v. Parkinson | 232, 245, 391 |
| Rattislaw, R. v. | 364 |
| Raunsley v. Hutchinson ... | 302, 319 |
| Rawlins, R. v. | 41, 42, 43, 82 |
| —— v. Ellis | 279 |
| —— v. West Derby | 63, 292 |
| Read v. Coker | 409, 410 |
| —— v. Perrett | 144 |
| Reader, R. v. | 372 |
| Reason, R. v. | 134, 135, 158 |
| Reece v. Miller | 147 |
| Reed v. Cowmeadow | 411 |
| —— v. Nutt | 22, 156 |
| Reeves v. White | 162 |
| —— v. Yeates | 66, 76 |
| Reg. { <i>All these Cases will be found</i> Rex { <i>alphabetically arranged</i> <i>under the DEFENDANTS'</i> <i>Names.</i> | |
| Reigate (Mayor of) v. Hart ... | 36, 262, 460 |
| Revel, R. v. | 48 |
| Reynolds, Ex parte | 120 |
| —— Re | 240 |
| Ricardo v. Maidenhead Board of Health | 284, 349 |
| Rice-Jones, Ex parte | 97, 99, 376 |
| Richards, R. | 233, 341 |
| Ridgway, R. v. | 302 |
| Rishton, R. v. | 48 |
| Rix, Re | 127 |
| Roberts, Ex parte | 363 |
| —— R. v. | 379 |
| —— v. Humphreys | 132 |
| —— v. Orchard | 410 |
| —— v. Williams | 412 |
| Robinson v. Lenaghan | 99 |
| —— v. Purday | 410 |
| —— v. Robinson & Lane | 121 |
| —— R. v. ... | 63, 156, 171, 181 |
| Robson v. Spearman, ... | 273, 411, 414 |
| Rochester (Mayor of), R. v. ... | 40, 317 |

| | PAGE | | PAGE |
|--|------------------------------|---|---------------------------------|
| Rodgers v. Richards | 85 | Selwood v. Mount | 87, 228, 233, 319 |
| Rogers, R. v. | 272, 341, 382 | Seton, R. v. | 236, 351 |
| —— v. Broderip | 414 | Sevenoaks, R. r. | 364 |
| —— v. Jones..... | 247, 390, 392 | Seward, R. r. | 177 |
| Rose and another, R. r. | 172, 363 | Shackell v. West | 330, 332 |
| Rotherham, R. r..... | 73 | Sharpe, Ex parte | 53 |
| Routledge v. Hislop | 159 | —— v. Warren | 162 |
| Rowberry v. Morgan | 63 | Shatwell v. Hall | 410 |
| Rowlands, R. v..... | 177, 180 | Shaw, R. v | 72, 82, 92, 99, 108, 109 |
| Rudd v. Scott | 411 | Sheffield (Mayor of), R. r..... | 362 |
| Rudge, R. v..... | 361 | —— Railway Co., R. r.... | 254 |
| Russell, R. v. | 38 | Shepherd v. Hills | 162 |
| Rutlandshire JJ., R. r. | 323 | Sheward, R. r..... | 358 |
| Ruyton, R. v. | 309 | Shingler v. Smith | 288 |
| Ryan v. Shilcock..... | 250 | Shrewsbury JJ., R. r. | 364 |
| S. | | —— and Hereford Rail- way, Ex parte | 319 |
| Sadgrove v. Kirby | 390 | Shropsh. JJ., R. r. | 63, 288 |
| Sadler, R. v..... | 198 | Sibbald v. Roderick | 275 |
| Saffron Hill, R. v. | 306 | Sillem, R. r..... | 186 |
| Sandgate L. B. v. Pledge | 334 | Simmons, R. r..... | 109 |
| Sainsbury, R. v. | 35, 36, 53 | Simpkin, Ex parte..... | 63 |
| St. Albans Sanitary Authority, R. v. | 299 | Simpson (Hugo), R. r. | 95, 130 |
| St. Aldwins, R. v. | 40 | —— R. v..... | 91, 92, 125, 193, 235 |
| St. George's, Bloomsbury, R. v. | 186, 190 | —— v. Margitson | 62 |
| St. George's (Vestry) v. Spar- row | 344 | —— v. Wells | 152 |
| St. James's (Overseers of) v. St. Mary's (Overseers of) ... | 330 | Skingley v. Surridge | 21, 93, 221, 227, 275 |
| St. John's case..... | 372 | Slade, R. r. | 226 |
| St. Mary's, Nottingham, R. v. | 228 | Sleep, R. r. | 160 |
| St. Maurice, R. v. | 37 | Smith, Ex parte..... | 81, 139, 233, 271, 324, 345 |
| St. Pancras (Vestry) v. Batter- bury..... | 161, 162 | —— R. r..... | 97, 98, 110, 116, 134, 136, 141 |
| St. Paul's, Covent Garden, R. v. | 229 | —— v. Butler | 331 |
| St. Paul (Inhabitants of), R. v. | 191 | —— v. Hopper | 409 |
| Salford (Overseers of), R. r. | 349 | —— v. Langham | 76, 199, 317 |
| Salomans, R. r. | 141, 220 | —— v. Rummens | 439 |
| Salop JJ., R. v..... | 154, 292, 294, 299, 358, 361 | —— v. Sibson..... | 280 |
| Sander's case | 41, 191, 433 | —— v. Wedderburne | 173 |
| Sandford v. Alock | 63 | —— v. Wiltshire | 425 |
| —— R. r..... | 152 | Snape, R. v..... | 148 |
| Sandiman v. Breach | 315 | Sneyd, R. r..... | 40 |
| Saunders v. Baldy | 208 | Somersetsh. JJ., R. v. | 288, 345, 354 |
| —— v. Saunders..... | 403 | Sommerville v. Mirehouse ... | 388, 392 |
| —— R. v. | 105, 278 | Soper, R. v. | 74 |
| Schofield, Ex parte..... | 123 | Souden's case | 340 |
| Scott v. Durant | 40 | South Holland Drainage Com- missioners, R. v. | 358 |
| —— R. v. | 84, 85, 207 | South Staffordsh. Waterworks v. Stone..... | 333 |
| Scotton, R. v. | 83, 109 | Southampton Dock Co., R. r. | 320 |
| Scale, R. r. | 223 | —— Gas L. & C. Co. —— R. r..... | 298 |

| | PAGE |
|----------------------------------|-------------------------------|
| Sparrow v. Impington | 325 |
| —— and another, R. v. ... | 360 |
| —— R. v. | 40 |
| Speed, R. v. | 54, 146, 181, 200, 382 |
| Spencer, R. v. | 354 |
| Sperling, R. v. | 324 |
| Spieres v. Parker. | 198 |
| Stafford (JJ. of), R. v. | 94, 111, 245 |
| Staffordsh. JJ., R. v. | 297, 319, 420 |
| Stainforth, R. v. | 20, 172, 190 |
| Stamp v. Sweetland. | 175, 411 |
| Stamper, R. v. | 101 |
| Stancliffe v. Clark | 330 |
| Standish, R. v. | 83 |
| Stanhope v. Thorsby | 324, 326 |
| Stannard, R. v. | 356 |
| Stannaught v. Hazeldine | 84 |
| Stapleton v. Hayman. | 40 |
| Staunton v. Wood | 63 |
| Staverton v. Ashburton | 20, 21 |
| Steele v. Brannan. | 324, 325 |
| Stevens v. Clark | 72 |
| —— v. Evans | 91 |
| —— R. v. | 37, 81, 181 |
| Stevenson v. Newnham. | 181 |
| Steventon, R. v. | 170 |
| Still v. Walls | 268 |
| Stimpson, R. v. | 54, 147, 153 |
| Stock, R. v. | 282 |
| Stockton, R. v. | 21 |
| Stoddard, R. v. | 109 |
| Stoke-Bliss, R. v. | 305 |
| Stokes, R. v. | 103 |
| Stone v. Marsh | 162 |
| —— R. v. | 92, 109, 113, 132 |
| Story, Ex parte | 93 |
| Stotfield, R. v. | 40 |
| Straight v. Gee. | 424, 435 |
| Strand Board of Works, R. v. ... | 32 |
| Strickland v. Ward. | 390 |
| Strong, Ex parte. | 315 |
| Styles v. Cox | 406 |
| Suffolk JJ., R. v. | 46, 289, 322, 364 |
| Summerhayes, R. v. | 118 |
| Summers, R. v. | 380 |
| Surrey JJ., R. v. | 44, 48, 285, 298, 307, 358 |
| Sussex JJ., R. v. | 298, 301, 362 |
| Sutton, R. v. | 80 |
| Swallow, R. v. | 207, 209 |
| Sweetman v. Guest | 60, 76, 326 |
| Symonds, v. Dimsdale | 367 |
| —— R. v. | 217, 223 |
| Syred v. Carruthers | 327, 329 |

| T. | PAGE |
|-----------------------------|----------------------------|
| Talbot v. Hubble | 28, 35, 36 |
| Tarrant v. Baker. | 411 |
| Tarry v. Newman | 38, 53, 78 |
| Taylor v. Clemson | 95, 99, 184 |
| —— v. Fenwick. | 411 |
| —— v. Freeman. | 278 |
| —— v. Humphries. | 132 |
| —— v. Nesfield | 411 |
| —— v. Newman. | 54, 181 |
| —— v. Oram | 329 |
| —— v. Philips | 278 |
| Tedford, R. v. | 304 |
| Tennant v. Bell | 63 |
| —— v. Cumberland. | 198 |
| Ternan, R. v. | 103, 105, 135, 233 |
| Terrant v. Baker. | 24 |
| Terret, R. v. | 351 |
| Terry v. Huntingdon | 390 |
| —— v. Newman. | 390 |
| Thackwell, R. v. | 298 |
| Theobald v. Critchinore ... | 250, 432 |
| Thomas, Ex parte. | 229, 399 |
| —— R. v. | 856 |
| —— v. Hudson | 426 |
| —— v. Stephenson | 410, 411 |
| Thompson, Re | 140, 337, 347, 353, 373 |
| —— R. v. | 200, 224, 258, 277, 377 |
| —— v. Gibson | 63 |
| —— v. Harvey | 41 |
| —— v. Ingham | 374 |
| —— v. Jackson | 405 |
| —— v. Sheppard. | 405 |
| Thorne v. Jackson | 196 |
| Thorpe v. Adams. | 402, 436 |
| Timms v. Williams. | 161 |
| Tinsom, Ex parte | 347 |
| Tod, R. v. | 75, 87 |
| Toft v. Rayner. | 156 |
| Toke, R. v. | 191 |
| Tolley, R. v. | 59, 113 |
| Tomlinson, Ex parte | 366 |
| —— R. v. | 310 |
| Tooke, R. v. | 48 |
| Tordoft, R. v. | 125 |
| Totnes, R. v. | 21, 99, 125, 186 |
| Totness Union, R. v. | 93, 190 |
| Trafford, R. v. | 162 |
| Tregarthen, R. v. | 239 |
| Truelove, R. v. | 100 |
| Tucke, R. v. | 142 |
| Tuddenham, R. v. | 79 |
| Tunncliffe v. Tedd. | 156 |
| Turk, R. v. | 215, 339, 378 |

| | PAGE | | PAGE |
|-------------------------------|-------------------|------------------------------|---------------|
| Turnbull, R. v. | 277 | Weale, R. v. | 193 |
| Turner v. Postmaster-General | 48, | Weaver v. Price | 395 |
| 72, 75, 82, 110, 112, 154 | | Webb v. Batchelour | 91 |
| —— R. v. | 84, 114, 141 | Websdell, R. v. | 114, 141 |
| Turner's case | 372 | Wedge v. Berkeley | 410, 411 |
| Twyford, R. v. | 280 | Weir, R. v. | 248, 433 |
| Tyler, R. v. | 123 | Weller v. Toke. | 406 |
| Tynemouth JJ., R. v. | 94, 277 | Wemyss v. Hopkins | 438 |
| Tyrwhitt, R. v. | 70, 76 | Were v. Devon. | 35 |
| U. | | West Houghton, R. v. | 292 |
| Underhill v. Longridge | 17 | —— v. Potts | 326 |
| Upton Gray, R. v. | 171 | —— Riding JJ., R. v. | 89 |
| V. | | Westmore v. Paine. | 333 |
| Van Boven's case. | 87, 268 | Westmoreland JJ., R. v. | 303, 320 |
| Vasey, R. v. | 196 | Weston v. Fournier | 404, 413 |
| Vaughan, Ex parte ... | 148, 152 | Weymouth JJ., R. v. | 47 |
| Vaughton v. Bradshaw ... | 101, 156 | Wheatman, R. v. | 73 |
| Venables v. Hardman | 331 | Wheeler v. Birmingham. | 325 |
| —— R. v. ... | 92, 100, 170, 419 | Whiffen v. Malling JJ. | 100 |
| Vipont, R. v. | 125, 202, 204 | Whistler, R. v. | 183 |
| W. | | Whitbread, R. v. | 360 |
| Wadley, R. v. | 351 | Whitby Union, R. v. | 315 |
| Waghorn, R. v. | 41 | Whitchurch, Ex parte | 341 |
| Wainwright, Re | 17 | White, R. v. | 93 |
| Wakefield L. B. v. W. R. | | —— r. Feast. | 150 |
| Railway Co. | 48, 49, 110, 154 | —— v. Fox | 147 |
| Walker v. Gt. Western Ry. ... | 325 | —— v. Redfern | 93, 178 |
| —— R. v. | 438 | —— v. Spettigue | 55 |
| Wallace v. Smith | 429 | Whitechapel, R. v. | 362 |
| Walsall v. L. & N. W. Ry. ... | 315 | Whitehead v. Reg. | 218, 220 |
| Walsh v. Southworth. | 66, 228, 248, | Whitehouse v. Fellowes. | 65 |
| 276, 280 | | Whittle v. Frankland | 134, 190 |
| Walton v. Chesterfield | 191 | Whittles, R. v. | 99, 308 |
| Warblington, R. v. | 89, 93 | Wickes v. Clutterbuck | 117 |
| Ward, R. v. | 99, 181, 439 | Wigan v. Strange | 325 |
| Ware v. Stanstead | 38 | Wilcock, R. v. | 38, 175 |
| Warnford, R. v. | 128 | Wilder v. Morris. | 22, 259 |
| Warwicksh. JJ., R. v. | 22, 64, 284, | Wiles v. Cooper | 73, 251 |
| 298, 307, 321 | | Wilkins v. Hemsworth | 236 |
| —— (Sheriff of), R. v. | 44, 48, | —— v. Wright | 126, 236 |
| 51 | | Wilkinson v. Dutton. | 75, 140, 346, |
| Waterhouse, R. v. | 208 | 353 | |
| Watkins v. Gt. North. Ry. Co. | 162 | —— v. Goffin. | 151 |
| —— v. Major. | 149, 160 | Willats, R. v. | 359 |
| —— v. Smith | 149 | William & John, The. | 57 |
| Watkinson, R. v. | 424 | Williams, Ex parte ... | 21, 245, 399 |
| Watson v. Bodell. | 426 | —— Re | 99, 280 |
| Watts, R. v. | 83, 103, 128 | —— R. v. | 204, 373 |
| Waye v. Thompson. | 93 | —— v. Adams ... | 148, 152, 344 |
| | | —— v. Burgess. | 62, 63 |
| | | —— v. Willcox | 125 |
| | | —— v. Wynne | 118 |
| | | Williamson, R. v. | 420 |
| | | Willis, R. v. | 83 |
| | | Willmott, Ex parte | 285, 287 |
| | | Wilson's case | 48, 338, 339 |
| | | Wilson, R. v. | 144 |
| | | —— v. Stewart | 81 |

xxvii

| | PAGE | | PAGE |
|--|-------------------------------|--------------------------------------|--|
| Wilts, R. v. | 109, 316 | Wright v. Leonard | 80 |
| Wiltshire JJ., R. v. | 55, 307, 364 | ——— v. L. G. Omnibus Co. | 438 |
| Wingate v. Wait | 72 | Wyatt, R. v. | 247, 267 |
| Winn v. Mossman | 262 | Wynne v. Ronaldson | 290, 327 |
| Winwick, R. v. | 40, 229 | | |
| Wishart v. Fowler | 40 | Y. | |
| Withnall v. Gartham | 290 | | |
| Wolverhampton Waterworks Co. v. Hawksford | 40 | Yarmouth, R. v. | 46 |
| Wood v. Fenwick | 219 | Yarpole, R. v. | 44 |
| ——— v. Folliott | 412 | Yeoveley, R. v. | 169, 439 |
| Woodcock, R. v. | 130 | Yorksh. (JJ. of), R. v. | 21, 259, 260, 310, 320, 349 |
| Woodford, R. v. | 191 | ——— (JJ. of West Riding), R. v. | 134, 259, 292, 293, 294, 300, 305, 306, 354 |
| Woodhall, Ex parte | 328 | ——— Tire, &c., Co. v. Rother- ham | 331 |
| Woodham, R. v. | 279 | Young v. Higgon | 62, 65, 406 |
| Woodhouse v. Woods | 327 | ——— R. v. | 152 |
| Woodrow, R. v. | 294 | Yoxley's case | 274 |
| Wootton v. Harvey | 244, 246 | | |
| Worcestersh. JJ., R. v. | 63, 89, 316 | Z. | |
| Worsley v. South Devon R. Co. | 51, 66 | | |
| Worthenbury, R. v. | 229 | Zohrab v. Smith | 99 |
| Wray v. Ellis | 224 | Zouch v. Empsey | 63, 289 |
| ——— v. Toke | 42, 58, 175, 210, 227, 247 | | |
| Wright v. Frant (Overseers of) | 72 | | |

TABLE OF STATUTES.

| | PAGE | | PAGE |
|-------------------------------|--------------------------------|----------------------------------|-------------------------------------|
| 36 Edw. 3..... | 2 | 5 Geo. 2, c. 18 | 27 |
| 13 Hen. 4, c. 7..... | 6, 61 | c. 19..... | 310, 366, 381 |
| 2 Hen. 5, c. 4 | 4 | 7 Geo. 2, c. 19..... | 157 |
| st. 1, c. 4 | 6 | 11 Geo. 2, c. 19 ... | 32, 39, 103, 178 |
| 8 Hen. 6, c. 9 | 72 | s. 4 ... | 51, 78, 82, 146 |
| 17 Edw. 4, c. 4..... | 6, 9 | 12 Geo. 2, c. 28..... | 359 |
| 11 Hen. 7, c. 3..... | 9 | 13 Geo. 2, c. 18..... | 362, 365 |
| c. 15 | 6 | 15 Geo. 2, c. 24 | 267 |
| c. 17 | 7 | 16 Geo. 2, c. 18, s. 1 | 49 |
| 19 Hen. 7..... | 9 | 17 Geo. 2, c. 38..... | 205, 274 |
| 23 Hen. 8, c. 5..... | 3 | 18 Geo. 2, c. 20, ss. 1, 3 | 27 |
| 25 Hen. 8, c. 13, s. 5 | 8 | 19 Geo. 2, c. 21, s. 4 | 103 |
| 27 Hen. 8, c. 24, s. 2 | 66 | 24 Geo. 2, c. 44 ... | 65, 404, 406, 417, 424, 426, 431 |
| 33 Hen. 8, c. 10 | 4, 10 | 25 Geo. 2, c. 36..... | 103 |
| 37 Hen. 8, c. 7..... | 5 | 26 Geo. 2, c. 14..... | 238 |
| 5 Edw. 6, c. 14..... | 7 | 2 Geo. 3, c. 28 | 390 |
| 4 & 5 Phil. & Mary, c. 2..... | 7 | 5 Geo. 3, c. 14..... | 77, 198 |
| 5 Eliz. c. 12..... | 7 | 15 Geo. 3, c. 39 | 126, 246 |
| 18 Eliz. c. 3 | 172 | 17 Geo. 3, c. 56 | 293 |
| 27 Eliz. c. 13 | 19 | 18 Geo. 3, c. 19..... | 227, 253, 275 |
| 43 Eliz. c. 7..... | 51, 133 | 19 Geo. 3, c. 50 | 139 |
| 3 Jac. 1, c. 13 | 8 | 36 Geo. 3, c. 60 | 351 |
| 21 Jac. 1, c. 12 | 424, 435 | 41 Geo. 3, c. 109, s. 39 | 51 |
| c. 27 | 115 | 42 Geo. 3, c. 119 | 79 |
| 12 Car. 2, c. 23..... | 12 | s. 4 | 103 |
| 13 Car. 2, c. 10..... | 382 | 43 Geo. 3, c. 59, s. 2 | 53 |
| 16 & 17 Car. 2, c. 2..... | 129 | 45 Geo. 3 | 141 |
| 22 Car. 2, c. 1 | 12, 350 | 49 Geo. 3, c. 68 | 272 |
| s. 11 | 76 | 50 Geo. 3, c. 48 | 273, 305 |
| 22 & 23 Car. 2, c. 12 | 59, 250 | c. 108..... | 266 |
| c. 25 | 11, 13, 113 | 53 Geo. 3, c. 127 | 152 |
| s. 9..... | 145 | 54 Geo. 3, c. 159, s. 11..... | 81 |
| 29 Car. 2, c. 3, s. 5..... | 120 | 56 Geo. 3, c. 100 | 341 |
| c. 7..... | 79, 113, 210, 278, 388 | c. 139..... | 19 |
| 31 Car. 2, c. 2..... | 231, 341 | 59 Geo. 3, c. 12, s. 24 | 148 |
| 3 & 4 Will. & Mary, c. 10... | 137, 202, 213, 222 | 1 Geo. 4, c. 56 | 145, 217 |
| 8 & 9 Will. 3, c. 25 | 115, 169 | 3 Geo. 4, c. 23..... | 127, 143, 174 |
| 9 & 10 Will. 3, c. 27 | 115, 141 | c. 46..... | 258, 259, 260 |
| 3 & 4 Anne, c. 4..... | 115, 141 | c. 126, s. 41 | 204 |
| 5 Anne, c. 14..... | 59, 113, 143, 209, 212, 381 | s. 132..... | 72, 189 |
| 6 Geo. 1, c. 16 | 273 | 4 Geo. 4, c. 34, s. 3 | 204, 219 |
| 9 Geo. 1, c. 7, s. 3..... | 23 | c. 37 | 260 |
| 11 Geo. 1, c. 30, s. 16 | 138 | c. 95 | 82 |
| 12 Geo. 1, c. 34 | 203 | 5 Geo. 4, c. 83 | 15 |
| 4 Geo. 2, c. 26..... | 168, 170 | s. 3 | 72 |
| | | s. 4 | 74 |

| | PAGE | | PAGE |
|----------------------------------|--------------------|---------------------------------|--------------|
| 6 Geo. 4, c. 108 | 177 | 6 & 7 Vict. c. 73 | 111 |
| 7 & 8 Geo. 4, c. 29 | 78 | c. 85 | 121 |
| c. 30 | 133, 149, 389, 411 | 7 & 8 Vict. c. 101 | 112, 163 |
| s. 24 | 145 | s. 3 | 99, 285 |
| c. 53 | 293 | s. 4 | 172, 290 |
| s. 65 | 32 | s. 57 | 24 |
| s. 98 | 57 | 8 Vict. c. 20 | 51, 97 |
| 9 Geo. 4, c. 31 | 101, 352 | c. 16, s. 3 | 51 |
| s. 27 | 74, 215 | c. 18, s. 3 | 30 |
| c. 43 | 43 | s. 22 | 57, 71 |
| c. 61 | 51, 302 | s. 3, 39 | 51 |
| s. 1 | 35 | 8 & 9 Vict. c. 18, s. 68 | 22 |
| c. 69 | 118, 155, 239 | c. 68 | 286 |
| 10 Geo. 4, c. 44 | 224 | c. 74 | 79 |
| s. 1 | 27 | c. 87 | 122 |
| s. 4 | 26 | s. 58 | 87 |
| 11 Geo. 4 & 1 Will. 4, c. 64, | | c. 118, s. 159 | 51 |
| s. 15 | 41 | 10 & 11 Vict. c. 14, s. 3 | 30 |
| 1 & 2 Will. 4, c. 32 | 148, 210 | c. 17, s. 3 | 30 |
| s. 3 | 118, 207, | c. 27, s. 3 | 30 |
| 212 | | c. 89 | 79, 424 |
| s. 35 | 146 | s. 29 | 75 |
| c. 33 | 153 | 11 & 12 Vict. c. 29, s. 5 | 23 |
| c. 37 | 28, 51 | s. 6 | 23 |
| c. 41 | 421, 425 | s. 7 | 23 |
| c. 76, s. 57 | 211 | s. 11 | 65 |
| 3 & 4 Will. 4, c. 35, s. 1 | 51 | c. 31 | 809 |
| 4 & 5 Will. 4, c. 13 | 197 | c. 42 | 32 |
| c. 85 | 43 | s. 3 | 103 |
| 5 & 6 Will. 4, c. 50 ... | 148, 155, 320 | s. 7 | 29 |
| s. 72 | 151 | s. 8 | 82 |
| s. 78 | 72, 190, | s. 11 | 25 |
| 397 | | s. 12 | 25 |
| s. 101 | 82 | s. 14 | 25 |
| 6 Will. 4, c. 12 | 43 | s. 15 | 25 |
| 6 & 7 Will. 4, c. 36 | 238 | s. 19 | 111 |
| c. 40 | 51 | c. 43 | 67, 441 |
| s. 15 | 51 | s. 3 | 25, 105 |
| 1 & 2 Vict. c. 74 | 51, 401, 424 | s. 5 | 34 |
| c. 47 | 26 | s. 8 | 82 |
| c. 71 | 39, 120, 224, | s. 10 | 77, 83 |
| 283, 437 | | s. 11 | 58, 70, 76 |
| s. 17 | 26 | s. 14 | 87, 164, |
| s. 35 | 220 | 230, 238 | |
| s. 38 | 76 | s. 15 | 127 |
| s. 40 | 57, 146 | s. 16 | 113 |
| c. 82, s. 1 | 28 | s. 17 | 86, 173, 245 |
| c. 93 | 425 | s. 18 | 167, 227 |
| 3 & 4 Vict. c. 84 | 39, 224 | s. 19 | 26, 243, 248 |
| c. 97 | 151 | s. 20 | 251 |
| 4 & 5 Vict. c. 59 | 298 | s. 21 | 243 |
| s. 1 | 42 | s. 22 | 253 |
| 5 & 6 Vict. c. 44 | 51 | s. 25 | 279 |
| c. 57, s. 15 | 49 | s. 27 | 246, 286, |
| c. 109 | 424 | 287, 318 | |
| 6 & 7 Vict. c. 40, s. 25 | 51 | s. 29 | 40, 53, 77 |
| c. 65 | 393 | ss. 33, 34 | 39 |
| c. 68 | 393, 438 | s. 35 | 286 |

TABLE OF STATUTES.

xxxi

| | PAGE |
|-----------------------------------|------------------------------|
| 11 & 12 Vict. c. 44 | 386, 463 |
| s. 2..... | 14, 106, 391 |
| ss. 3, 4, 6..... | 397, 400 |
| s. 4..... | 398 |
| s. 5 | 75, 229, 321, 398 |
| s. 8 | 62, 65 |
| c. 91 | 22 |
| c. 110..... | 24 |
| 12 & 13 Vict. c. 14 | 70, 228, 276 |
| c. 16 | 394 |
| c. 18 | 43 |
| c. 40..... | 318, 320 |
| c. 45..... | 295, 296 |
| s. 3..... | 308 |
| s. 7..... | 174, 177, 206, 237 |
| s. 11 | 315 |
| s. 17 | 260 |
| c. 92 | 62 |
| c. 103 s. 9 | 70, 76 |
| 13 & 14 Vict. c. 105..... | 36 |
| 14 & 15 Vict. c. 55 | 26, 228 |
| c. 99..... | 121, 127 |
| c. 100 | 179, 470 |
| 15 & 16 Vict. | |
| c. 61 | 32 |
| s. 3..... | 77 |
| c. 138, s. 31 | 77 |
| 16 & 17 Vict. c. 30... .. | 353, 355, 360 |
| c. 32 | 286 |
| c. 83 | 121 |
| 17 & 18 Vict. c. 104, s. 520..... | 32 |
| 18 & 19 Vict. c. 48 | 430 |
| c. 91 | 32 |
| c. 120..... | 65 |
| 20 & 21 Vict. c. 43 ... | 318, 323, 330, 360, 398, 473 |
| c. 85, s. 21 | 53 |
| 21 & 22 Vict. c. 68 | 29 |
| c. 73 | 39, 310 |
| c. 90 | 329 |
| 22 & 23 Vict. c. 21 | 259 |
| c. 32 | 383 |
| 23 & 24 Vict. c. 77 | 208 |
| c. 127..... | 112 |
| 24 & 25 Vict. c. 96 | 440 |
| s. 33 | 78 |
| s. 36 | 30 |
| ss. 97, 99 | 81 |
| s. 103 | 41, 102, 424 |
| s. 105..... | 91, 103 |
| s. 107..... | 280 |
| s. 108 | 199, 239 |
| s. 111..... | 350 |
| s. 112..... | 439 |
| s. 113..... | 404 |
| s. 114..... | 32 |
| s. 115..... | 33 |
| c. 97 | 440 |

| | PAGE |
|---------------------------------|--------------------|
| 24 & 25 Vict. c. 97, s. 10 ... | 72, 109 |
| s. 52..... | 72, 109, 145, 149 |
| s. 63 | 81 |
| s. 66..... | 199, 239 |
| s. 69 | 350 |
| s. 71 | 404 |
| c. 100, s. 42 | 75 |
| s. 44..... | 200, 232 |
| ss. 44, 45 | 22, 156 |
| s. 46 | 149 |
| c. 133..... | 3 |
| 25 Vict. c. 20 | 336 |
| 25 & 26 Vict. c. 89 | 97 |
| c. 102..... | 344 |
| 26 Vict. c. 10 | 131 |
| 26 & 27 Vict. c. 77..... | 23, 447, 462 |
| c. 93, s. 3 | 72 |
| c. 97 | 24 |
| c. 103, s. 1 | 200 |
| c. 113..... | 224 |
| 27 & 28 Vict. c. 39, s. 6 | 49 |
| c. 44 | 53 |
| c. 55 | 102 |
| c. 101..... | 284 |
| 28 Vict. c. 18 | 164 |
| c. 35 | 424 |
| 28 & 29 Vict. c. 121 | 50 |
| c. 126 | 267, 268 |
| 30 & 31 Vict. c. 84, s. 31 ... | 154, 209 |
| c. 106, s. 27 | 24, 30, 297 |
| c. 115, s. 2 | 50 |
| c. 124..... | 32 |
| 31 Vict. c. 22 | 43 |
| 31 & 32 Vict. c. 72, s. 6 | 26 |
| c. 107..... | 26 |
| c. 121..... | 209 |
| c. 122..... | 54 |
| 32 & 33 Vict. c. 24 | 78 |
| c. 41 | 428 |
| c. 49 | 261 |
| c. 57 | 437 |
| 33 & 34 Vict. c. 23 | 226 |
| 34 Vict. c. 18 | 53 |
| 34 & 35 Vict. c. 31 | 51 |
| c. 41, s. 46 | 50 |
| c. 48 | 26, 27 |
| c. 87 | 79 |
| c. 112, s. 16 | 102, 435 |
| s. 18 | 439 |
| 35 & 36 Vict. c. 26 ... | 339, 368, 400, 476 |
| c. 65 | 60, 83, 134 |
| c. 93 | 73, 353 |
| c. 94 | 51, 57, 122, 224 |
| 36 & 37 Vict. c. 66 ... | 328, 361, 473 |
| 38 Vict. c. 18 | 30 |
| 38 & 39 Vict. c. 25 | 132 |
| c. 54 | 27 |

| | PAGE | | PAGE |
|---------------------------|------------------------|----------------------------------|-----------------------------------|
| 38 & 39 Vict. c. 55 | 49, 61 | 42 & 43 Vict. c. 49, s. 46 | 30 |
| c. 63 | 54 | s. 51 | 17 |
| c. 86 | 122, 203 | 43 & 44 Vict. c. 9 | 62 |
| c. 90 | 57, 159, 203 | c. 35, s. 6 | 31 |
| 39 & 40 Vict. c. 20 | 462 | 44 & 45 Vict. c. 24.... | 69, 97, 99, 106, 120, 249, 513 |
| c. 36 | 33, 123 | 45 & 46 Vict. c. 50..... | 24, 258, 278, 425, 499, 506 |
| s. 240..... | 80 | s. 154..... | 35 |
| c. 61, s. 19 .. | 54, 66 | s. 157..... | 27 |
| s. 20 | 42 | s. 158 | 37, 43 |
| s. 34 | 132, 135 | s. 166... .. | 66 |
| 40 & 41 Vict. c. 21 | 267 | 46 & 47 Vict. c. 22 | 97 |
| c. 43..... | 262, 459 | c. 51 | 52 |
| 41 Vict. c. 16 | 51, 226 | c. 52 | 52 |
| c. 19 | 287 | 47 & 48 Vict. c. 43..... | 67, 494, 516 |
| 41 & 42 Vict. c. 73 | 31 | 48 & 49 Vict. c. 69 | 103, 122 |
| c. 74 | 122 | 50 & 51 Vict. c. 25 | 165, 520 |
| 42 & 43 Vict. c. 30 | 58, 98 | c. 28 | 158 |
| c. 49 | 67, 477 | c. 55 | 52 |
| s. 4..... | 15, 277 | c. 58..... | 51, 58, 79, 122, 128 |
| s. 7 | 15, 221, 266 | c. 71 | 169 |
| s. 9..... | 241 | 51 & 52 Vict. c. 23 | 66 |
| s. 10 | 15 | c. 41 | 418 |
| s. 16 | 15, 165, 200 | c. 43 | 28, 66 |
| s. 17 | 15, 118 | c. 46, s. 1 | 26, 126 |
| s. 18 | 269 | c. 63 | 230 |
| s. 19 | 13, 282 | 52 & 53 Vict. c. 44 | 13, 122 |
| s. 20 | 37, 39, 110 | c. 63 ... | 61, 110, 120, 298, 334, 521 |
| s. 21..... | 252, 255 | 53 Vict. c. 5..... | 52, 288 |
| s. 25 | 240 | 53 & 54 Vict. c. 21 | 112, 436 |
| s. 31 | 288, 291, 295 | c. 59 | 13, 84, 216 |
| s. 33 | 13, 332 | c. 71 | 51 |
| s. 37..... | 100, 281 | 54 & 55 Vict. c. 31 | 58, 97 |
| s. 38 | 102 | c. 65, s. 24..... | 34 |
| s. 39 | 85, 174, 198, 263, 281 | c. 75 | 58 |
| s. 40..... | 314, 355 | c. 76 | 13, 49, 79, 102, 122 |
| s. 41 | 99 | | |
| s. 43..... | 255, 256 | | |
| s. 45 | 30 | | |

THE
LAW AND PRACTICE
OF
SUMMARY CONVICTIONS.

INTRODUCTION.

AN inquiry into the antiquity of that summary method of conviction, which forms the subject of the following Treatise, or into the causes which occasioned its substitution for that mode of popular trial, which distinguishes our jurisprudence, is rather prompted by curiosity, than by any relation to the law upon the present subject as it now subsists: since that is founded entirely upon the positive authority of acts of parliament, from which source alone the whole system derives its being. A few cursory remarks, however, upon the date and origin of a judicature, so remarkably contrasted with the spirit of our primitive institutions, may not, it is hoped, be altogether unacceptable or misplaced.

The office of a justice of peace has been so much enlarged by the duties annexed to it, in the execution of penal statutes, that there remains scarcely a resemblance between the present office and that of the ancient conservators of the peace, out of which it has been gradually formed. The first great alteration, that deserves to be remarked, is the manner of appointment. Till the commencement of the reign of Edward 3, those officers, like

the sheriffs down to the preceding reign, were chosen by the freeholders at large; agreeably to that principle of popular election in the choice of magistrates, which pervaded the Anglo-Saxon institutions, and seems from the earliest times to have characterized the policy of all those northern nations from which they emanated (a). The act of 1 Edw. 3, (b) at the same time that it removed the choice from the people, by ordaining that thenceforth in every county certain persons should be *assigned*, i. e. by commission, to keep the peace, insured also a more regular appointment of officers for that purpose throughout the kingdom. The persons so assigned under the authority of that law acquired, about thirty-five years afterwards, the legal title of justices of the peace; by which appellation they were first styled in a statute of the thirty-sixth year of Edw. 3 (c).

Their power and duty, however, at first, was simply that of guarding and taking security for the preservation of the peace; nor was it till a considerable time had elapsed from their first appointment by Edward 3, that they were invested with any judicial authority in relation to other statutory offences,—nor until a much later period still, that a discretionary power of conviction was vested in individual justices, without the intervention of a jury or any popular form of trial.

For some time following the first of these periods, when any new statute was passed for the regulation of trade or police, which required particular provisions to be made for its administration, the method was by the statute itself, either to assign the execution of it to the sheriffs of counties, and mayors or other head-officers in boroughs, which was most usual in matters merely affecting the police,—or in other cases to declare, that commissioners,

(a) *Eliguntur* in conciliis et principes, qui jura per pagos vicosque reddunt. Tacit. de Mor. Ger.

(b) 1 Edw. 3, st. 2, c. 16.

(c) See the observations of the court upon this subject in *R. v. Dunn*, 12 A. & E. 617.

sometimes also styled justices, should be appointed for carrying the act into execution; this was more frequently the case in those penal statutes which affected peculiar trades, fisheries, and the like; and such commissioners were either nominated by the act itself, or appointed by commission from the crown, under the authority of the act. By degrees, however, the execution of such penal laws was, by their respective provisions, more frequently vested in the justices of peace, by that denomination; who, being in general the persons best qualified by discretion and knowledge in each district, might, without the trouble of a fresh selection, be most eligibly fixed upon for the performance of that duty; and the former method, at the same time, was gradually disused; so that, towards the middle of the reign of Henry 4, the practice of appointing commissioners for particular acts had almost entirely given way to that of charging the justices of peace with the execution of them (*d*).

Still, however, their power, in regard to the manner of executing that duty, was restrained to the only mode of judicial inquiry known to the common law, and to which alone a general authority to *hear and determine* offences could refer. Neither the acts above alluded to, which were to be executed by special justices, nor, at first, those which were referred to the justices of peace by their name of office, contained any other direction as to the manner of their proceeding, than what was conveyed by the expressions authorizing them to *hear and determine*, or to *examine and punish* offences against the respective acts; which according to the general principles of law, implies only a power to proceed by the common law method of inquisition and verdict (*e*).

(*d*) Some instances, however, of what had formerly been general exist in later times; such, for example, are the Statute of Sewers (23 Hen. 8, c. 5), and the Land Drainage Act, 1861 (24 & 25 Vict.

c. 133), which are administered by special commissioners, appointed according to the provisions of those acts.

(*e*) See 4 Co. 74, *b*, and the authorities there referred to.

The justices, therefore, were under the necessity of holding sessions and assembling jurors for the trial of the smaller offences. The trouble and expense of these meetings to the justices themselves, when there were but few in each county—as, in the thirty-fourth year of Edward 3, not more than eight in the county of Kent (*f*)—was the occasion that they were not called sufficiently often for the number of offences which required to be disposed of; and therefore it was that the statute of 36 Edw. 3, st. 1, c. 12, commanded that they should be held at least four times in the year: for it is observable that neither this, nor the subsequent statutes, by which it is enforced, 12 Ric. 2, c. 10, and 2 Hen. 5, c. 4, restrain the times of holding the sessions to that number; and the latter expressly adds, “and more often if need be.” However, as the justices were not enjoined absolutely to hold them, except at those times, and as the act 12 Ric. 2, c. 10, which assigned them wages for defraying their expenses at the sessions, only made provision for the four principal or quarter sessions, the effect was to limit the actual times of holding the sessions to those periods. As the offences subjected by various statutes to the cognizance of justices became more numerous, and particularly during the reign of Henry 7, when their number was vastly increased, their assembling once in each quarter of a year was found insufficient to afford the despatch, which the nature of those offences required; to provide a remedy for which, without introducing any new and extraordinary jurisdiction, or departing from the ancient mode of conviction by verdict, the statute 33 Hen. 8, c. 10, enacted, that at the Easter sessions, in every year, the justices should diligently peruse and study the statutes therein enumerated (comprehending, in fact, all those in the execution of which they had authority), and should then divide themselves according to hundreds, wapentakes, &c., assigning at least two to each division, who in their

respective divisions should (six weeks before each of the general quarter sessions) hold a special sessions expressly for executing those statutes, at which they should inquire of the offences specified, either upon presentment, *i. e.*, by indictment, previously found by the grand jury, or upon information by a private person ; but, whether upon indictment or information, as the statute expressly takes notice, the party, previous to any punishment, was always supposed to be convicted by confession or verdict of twelve men ; and the same statute contains regulations for impanelling the jury upon those occasions. The opposite inconvenience, however, resulting from this act, of calling the country together every six weeks for the special and general sessions, was very soon felt to be greater than the advantage proposed from it in the disposal of offences ; and therefore, four years afterwards, it was repealed by another act, 37 Hen. 8, c. 7, for the reason expressly assigned, *viz.*, “that the king’s most loving subjects are much travailed, and otherwise encumbered, in coming and keeping of the said six-weeks’ sessions, to their costs, charges, and unquietness ;” and, by this latter act, the articles enumerated in the former were referred to the general quarter sessions, as before.

In order, therefore, to avoid the inconvenience of postponing the trial of small offences to the quarter sessions, and in very many cases of committing the party for the intermediate time,—or, on the other hand, of making too frequent calls upon the country, in assembling a jury at shorter intervals,—there seems to have been no alternative, as those offences became more and more numerous, than that of entrusting to the justices, out of sessions, a power to hear and determine the matters themselves.

When this expedient was, for the first time, adopted by the legislature, it is not easy, on account of the ambiguous wording of some of the older statutes, to determine with precision. In very early times such a power had been conferred upon them in two cases, which seemed in their

nature to require a speedy interference ; but, even in these, it was confined to their own view : these are the cases of forcible entries, 12 Ric. 2, c. 2, and of riots, 13 Hen. 4, c. 7 ; in the latter of which, it may be remarked, this extraordinary jurisdiction is carefully limited by the urgency of the occasion, by which alone, therefore, it was probably thought to be justified ; for it is there directed, that if the rioters had departed before the arrival of the justices, so that the view could not be had, they are then to inquire of the matter, not by themselves, but by means of a jury, which they are specially directed in that case to summon. One other instance also occurs of a power to convict without jury, but that was on *confession* of the party : viz., by the act of 2 Hen. 5, st. 1, c. 4, relating to labourers, which authorized them to examine labourers, &c., on their oath, and on *their confession* to punish them *as if they were convict by inquest*.

These two cases of *view* and *confession* seem to be the only clear instances in which justices of peace were empowered, in those early times, to inflict punishment upon their own inquiry and judgment. There are, indeed, two other statutes in which such an authority may perhaps be doubtfully inferred. The first is that of 17 Edw. 4, c. 4, against fraud in the making of tiles ; which empowered the justices of peace, “ and every of them, *by their discretion*, as well by examination as otherwise, to inquire, hear, and determine the offences against that act ; ” from which large words Mr. Lambard classes this as one of the matters of which a single justice might take cognizance out of sessions, though not without stating a doubt whether the act would bear that construction. The other is the statute 11 Hen. 7, c. 15, against fraud by sheriffs, under-sheriffs, &c., in entering plaints in the county courts ; which empowered any justice of the peace, on complaint of the party grieved, to examine the person complained of, “ and if on such examination he shall be found in default, he shall be convict and attain of the offence, without further examination

or inquiry," and forfeit 40s., which the justice was directed to certify, together with the examinations, into the Exchequer. This also is enumerated by Lambard, amongst the things that justices may execute summarily out of sessions. But what was the mode of proceeding contemplated in framing these acts, or whether these words are sufficient to convey an authority then perfectly novel, and which we might therefore expect to find explicitly described, must remain a matter of doubt. The author already referred to seems to have been at a loss to define the method of proceeding intended by the expressions in those acts, and to have hesitated in pronouncing that a sole power of determining was vested in justices, without a jury; "for," he observes, "how far this discretion and the word *otherwise*, may be extended, in this and such like cases, cannot be foretold, for it is referred to the justices, and they must take counsel *ex re* and *ex tempore* for it."

This leads to another observation necessary to be kept in mind, in order to guard against a misconstruction of some of the older statutes, particularly those in the reign of Hen. 7, which are worded in a manner that may at first sight appear to imply a power of summary conviction, in contradistinction to the trial by the country, but which have, in reality, a totally different view. The statutes alluded to are those which make use of expressions of the following import; viz., that the justices of the peace may hear and determine the offences specified, "as well by inquisition as by information and proofs," (as in the Game Act, 11 Hen. 7, c. 17); or, "that the justices, upon examination of two lawful witnesses, may award process in the same manner as upon presentment or inquisition of twelve men," (as in the statutes 5 Eliz. c. 12, 4 & 5 Phil. & Mary, c. 2, 5 Edw. 6, c. 14). But it is to be observed, that when a power was given to justices of peace *to hear and determine*, &c., this conferred an authority only to proceed in the common law way, by indictment found by the grand jury,—or, as the statutes express it,

upon inquisition and presentment of twelve men. Upon this proceeding, the justices had authority of course to award process, but they had no power to do so, or to inquire upon the presentment or information of a private relator (*g*); and therefore the informer had no means of recovering at the sessions a share of the penalty, unless such a mode of recovery was expressly authorized by statute; which, according to Mr. Lambard, was the sole object of the provisions above alluded to. This purpose, though sometimes expressed with a conciseness that may give rise to some ambiguity, is in certain acts explained in a manner that serves to illustrate the meaning of those which are less explicit: of such it is sufficient to refer to those of 25 Hen. 8, c. 13, s. 5, and 3 Jac. 1, c. 13.

The forfeitures imposed by penal statutes, if not otherwise specially disposed of, belonged to the crown; but experience proved, that the admission of the informer to a share was equally necessary to the purposes of police and revenue. All the acts, however, prior to the reign of Henry 7, which entitle the informer to a moiety of the penalty, direct the mode of recovery to be by action of debt, bill, or plaint; nor, before that time, does there appear to be any instance of a power to proceed by information at the sessions for penalties. In that reign it was, that it became usual to insert, in penal statutes, the provisions authorizing the recovery of the penalties before the justices in sessions by information, and empowering them to award process upon the information of any person, as they might upon indictment or presentment by the inquest. The policy of affording this encouragement to prosecutions, which brought a share of the penalties to the crown, is characteristic of the ruling disposition of the sovereign; and, in that light, it may be worth remarking, that the last session of his reign affords a striking proof of the influence of that spirit upon the character of the laws, by the iniquitous principle of making

the justices sharers in the penalties of their own inflicting. The statute 19 Hen. 7, which imposed most unusually heavy penalties upon the use of various modes of taking deer, authorized two justices in sessions arbitrarily to examine and commit persons whom they judged guilty, until payment of the fines to the king ; and declared them entitled to one-tenth of all such fines, "for their labour in that behalf." This disgraceful pattern, as it had no precedent, has happily had no copy in our law. The power, however, of inquiry on information by justices in sessions, which took its rise about the period we are speaking of, continued to prevail, in penal statutes of the succeeding reigns, till the mode of recovery, by summary examination before a single justice or justices out of sessions, was more commonly substituted in its stead.

To return to our first inquiry, concerning the period when that measure came into use, it has been already remarked, as a settled maxim, that a naked authority to *hear and determine* implied a proceeding conformable to the common law mode of determination only, *i. e.*, by a jury ; and one instance only, that of 17 Edw. 4, c. 4, is noticed earlier than the reign of Henry 7, which carries the appearance of a more arbitrary and discretionary jurisdiction. But, in the eleventh year of that king's reign, the legislature was induced to break down all respect for the ancient common law mode of trial, by an act that, in spite of the fair preamble, betrays its true source in the rapacious policy of the monarch, *viz.*, 11 Hen. 7, c. 3 ; which, pretending that many wholesome statutes were not executed, by reason of the embracery and corruption of the inquests, ordained, that it should be lawful for the justices of assize, and the justices of peace, in every county, upon information (for the king), *at their discretion*, to hear and determine all offences short of felony against any statute then in being (*h*). This discretionary authority, fettered by no

(*h*) 11 Hen. 7, c. 3. See the statutes printed by Powell, 1551, vol. i. ; and 4 Inst. 40, 41.

rules, and intentionally absolved from the observance of law and usage, enabled the justices to execute all penal statutes without any presentment or trial by jury. The real intention of the statute, which was that of replenishing the exchequer by the terror of arbitrary and vexatious prosecutions, under colour of penalties, upon all the most obsolete penal statutes, however obscure or inconsistent with the times, was rigorously seconded by Empson and Dudley, whose activity was stimulated by a grant of the extraordinary office of Clerks of the Forfeitures. By their means the mischiefs of a power, so liable in any hands to abuse, became an instrument of intolerable oppression, the more galling from its pretensions to legal authority. Among the first acts, therefore, of the parliament which commenced with the succeeding reign, was the abolition of that dangerous power, by the repeal (*i*) of the statute, and the attainder of the two obnoxious instruments of its abuse; whose atonement, according to the maxims of popular justice, was measured by the iniquity, rather than the illegality, of their acts.

After this short and unfavourable experiment, which Sir E. Coke adduces as an example of the danger of altering the common law, and which has never been imitated by a like *general* law of the same nature, the legislature, for some time, seems to have been, not without reason, sparing in the sanction of a summary jurisdiction, even in particular offences. And we have already (*k*) had occasion to remark the means unsuccessfully tried in the thirty-third year of Hen. 8, to provide for the accumulated execution of the penal statutes, without deviating from the common law rules of judicature.

The earliest statute, upon which a summary conviction by a justice is on record, or of which a precedent is found in the books, is that of 33 Hen. 8, c. 6, against the practice of carrying daggs, or short-guns. Mr. Lambard has given

(*i*) 1 Hen. 8, c. 6.

(*k*) *Ante*, p. 4.

a precedent of a conviction upon this statute (*l*) ; and there appears to have been one removed into the Court of Queen's Bench by *certiorari*, as early as the forty-third year of Elizabeth, 1600 : and this very case affords a proof of the objection, which, in the state of manners at that day, might well exist against relaxing the jealousy of the common law, by entrusting any thing like arbitrary authority in private hands. It appears that a sheriff's officer, going to execute a writ against a justice of the peace for a debt, and taking with him a hand-gun, from the apprehension of a rescue, the justice, instead of obeying the writ, apprehended, convicted, and imprisoned the officer, till he paid a fine of 10*l.*, under colour of the act of parliament.

The few instances in which a summary power of fine or imprisonment was committed to individual justices, amounting, up to the end of the reign of Elizabeth, to no more than four or five, attest the unwillingness of the legislature to quit the safe and approved forms of criminal judicature. In the following reign the multiplied statutes against a variety of petty disorders, such as those relating to alehouses, profane swearing, drunkenness, game, wagers, embezzlements, and such like, occasioned a more frequent recourse to the summary interference of justices of peace, which was gradually extended to matters of greater importance, as the nation became more familiarised to its use ; and, after the Restoration, by the first excise acts, and by several statutes affecting the regulations of trade, and, lastly, by the Game Act, 22 & 23 Car. 2, c. 25, the practice was insensibly moulded into the jurisprudence of the country ; of which it still continues to form an important branch.

We shall conclude these remarks with briefly noticing the changes which have been made in the system since its institution ; the most material of which is the right of *appeal*.

(*l*) Chap. VII., p. 297.

By the first statutes, which gave a power to justices of the peace out of sessions to hear and determine the respective offences thereby created, that determination was final as to the facts; for a liberty of appeal, unless expressly annexed to the authority, was not, like that of suing out a *certiorari*, implied as a common law right.

The privilege of appealing to the sessions against the *conviction* of single justices, by which that authority is now so generally and properly qualified, was not known till the reign of Charles 2; though the model of an appeal in other matters might be found in the acts relating to the poor, as far back as that of Elizabeth. The earliest instance of an appeal to the sessions, against a penal conviction, is found in the Hereditary Excise Act, as it was called, 12 Car. 2, c. 23; which authorized an appeal, not indeed against the decision of justices of the peace, if they choose to act, but against that of certain sub-commissioners, on whom, in case of the neglect or refusal of the justices, the power of inflicting the penalties of the statute was devolved, but subject to the review and final determination of the justices in sessions. The first instance of an appeal from the sentence of justices of peace, is in the statute 22 Car. 2, c. 1, called the Conventicle Act; and it deserves to be remarked, that the idea of controlling the jurisdiction of individual justices seems originally to have been by allowing an appeal to the verdict of a jury; for that act, after authorising a summary examination and recovery of penalties before any two justices, gave to the party convicted the privilege of an appeal in writing, to the judgment of the justices of the peace in their next quarter-sessions, upon which "he may plead and make his defence, and have his trial by a jury thereupon" (*m*). That precedent, however, has not been copied; and the notion of an appeal to a jury seems to have been speedily laid aside; for an act of the following session, the 22 & 23

Car. 2, c. 25, established the mode of an appeal which has since been uniformly adopted, viz. to the justices in sessions, but without the privilege of a trial by jury.

Prior to the passing of the Summary Jurisdiction Act, 1879, an appeal lay only when the statute on which it was founded authorised it. That act gives a general right of appeal, but limits such right to sentences of imprisonment without the option of a fine (*n*). The appeal to quarter sessions is either on fact or law. There is an alternative appeal on law only, by a case stated by justices for the opinion of the High Court of Justice (*o*).

Prior to the passing of the act of 1879 the procedure on appeal varied with the act giving the appeal. The procedure on appeals to quarter sessions is now rendered uniform (*p*).

The principal alterations introduced by more modern acts of parliament have been, by taking away the writ of *certiorari* in numerous cases, and by the frequent adoption of compendious forms, which greatly abridge the task and care of the magistrate in drawing up the conviction. The entire dispensation from any detail, either of the proceeding before the magistrate, or of the proofs in support of the fact, which these forms allow, is undoubtedly calculated to secure the execution of penal statutes, by rendering it more easy: for the conviction is thereby reduced to a mere memorandum of the judgment: and if this had been the sole purpose for which the record of the magistrate was originally required, no objection could be raised to its being rendered as concise as possible. But

(*n*) 42 & 43 Vict. c. 49, s. 19. Several recent Acts have given a right of appeal to "any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act." See Prevention of Cruelty to Children Act, 1889 (52 & 53 Vict. c. 44, s. 10), Public

Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, s. 7), and Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 125).

(*o*) See Summary Jurisdiction Acts of 1857 (20 & 21 Vict. c. 43), and 1879 (42 & 43 Vict. c. 49, s. 33).

(*p*) Summary Jurisdiction Acts of 1879 & 1884.

that this was considered only as one object of it, and that the design of the conviction was not merely to record the fact of the judgment, but to show that the proceedings required by justice had been regularly observed, and the sentence legally supported by the evidence, is everywhere evinced by the language and sentiments of the ablest judges, from the time of Lord C. J. Holt; who himself, on all occasions, seems to have regarded the obligation of recording the whole proceedings as a necessary counterpoise against the liability to error or misapplication, to which a private and discretionary tribunal is naturally exposed. Considering, indeed, the severity of many of the penalties subjected to this jurisdiction, without any opportunity of pleading to the conviction,—and that, moreover, if the conviction should be set aside upon appeal, yet, as the law now stands, where the magistrate does not exceed his jurisdiction or act in a matter in which he has no jurisdiction (*q*), nothing short of express malice in the magistrate entitles the party grieved to any redress for the inconvenience he may have been put to,—it may be worthy of deliberation, whether the too prevalent use of these short forms of conviction, particularly in regard to offences of which the evidence may involve some nicety, does not, by withdrawing the principal obligation to a regular, perfect and cautious investigation, leave too little security against the possible effects of haste, mistake, or preconception, which, without the least mixture of bad motives, may produce as much injustice as malice itself.

The changes made by the Summary Jurisdiction Act, 1879, are too important to omit from the Introduction to this work. By that act the powers of courts of summary jurisdiction have been materially increased.

The growth of petty sessions, as the regular court of first instance for the trial of offences, was then first dis-

(*q*) 11 & 12 Vict. c. 44, s. 2.

tinctly recognized. Up to that time a single justice sitting in any place which *ipso facto* became an open court, possessed the full power of summary jurisdiction, except in those numerous cases—where the presence of two justices was expressly required by statute. The exception is now made the rule. In cases arising under any future act, a single justice will have no powers whatever of summary jurisdiction. Certain indictable offences are under the circumstances in the act of 1879 mentioned authorized to be dealt with summarily (*r*). For the first time a general power is given to a person charged before a court of summary jurisdiction to demand a trial by jury in case of offences triable summarily and punishable by imprisonment without the option of a fine for a term exceeding three months (*s*).

The act exhibits many instances of lenity towards offenders. A court of summary jurisdiction may, though the charge is proved, discharge the accused without punishment (*t*). It has power to impose a fine in lieu of imprisonment where the imposition of imprisonment is compulsory, as in the case of the Vagrancy Act (5 Geo. 4, c. 83). The minimum fine in respect of a first offence has become a thing of the past (*u*). A fine may be ordered to be paid by instalments or security taken for its payment (*v*).

(*r*) 42 & 43 Vict. c. 49, ss. 10—
13, 27.
(*s*) S. 17.

(*t*) S. 16.
(*u*) S. 4.
(*v*) S. 7.

PART I.

MATTERS ANTECEDENT TO CONVICTION.

CHAPTER I.

OF THE SUMMARY JURISDICTION OF JUSTICES OF THE PEACE.

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|---|----|---|----|
| 1. <i>The Jurisdiction in general</i> | 16 | 6. <i>Preliminaries to exercise of Jurisdiction</i> | 53 |
| 2. <i>Limits thereof, as to Residence of Justices</i> | 18 | 7. <i>As to Nature of Offence</i> | 54 |
| 3. <i>As to Place of the Offence</i> | 28 | 8. <i>Limitation as to Amount</i> | 57 |
| 4. <i>As to Number and Description of Justices</i> | 37 | 9. <i>Limitation as to Time</i> | 58 |
| 5. <i>Priority of Jurisdiction</i> | 53 | 10. <i>Delegation of Authority</i> | 66 |

SECT. 1.—*Of the Jurisdiction in general.*

THE examination and punishment of offences in a summary manner by justices of the peace out of their sessions, and without the intervention of a jury or an open trial, are founded entirely upon a special authority conferred and regulated by statute. But where, owing to some omission in the statute, the power to convict summarily is not given in express words, the justices may still proceed when it may reasonably be implied, from the rest of the statute, that such jurisdiction was intended to be given to them (a). It is provided by the Summary Jurisdiction

(a) Thus, where a statute declared that any person exposing in a public place where animals are commonly exposed for sale, any animal infected with a contagious or infectious disease, should be deemed guilty of an offence, and should be liable to pay a penalty not exceeding 20*l.*; it was held, that although there were no express words making

the penalties recoverable by summary procedure, yet that a jurisdiction was impliedly conferred upon justices to deal summarily with offences under the statute. *Cullen v. Trimble*, L. R., 7 Q. B. 416; 41 L. J., M. C. 132; 26 L. T. 691; *Johnson v. Colam*, L. R., 10 Q. B. 544; 44 L. J., M. C. 185; 32 L. T. 725; 23 W. R. 697.

Act, 1879, that "where in any future act, any offence is directed or authorized to be prosecuted summarily or on summary conviction, or any fine is directed or authorized to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly (b). No new offence is cognizable by justices of the peace out of their sessions, unless expressly made so by act of parliament (c). Nor can any power expressly given to a justice, to do a particular act, be enlarged by inference. Thus, where the 6 Geo. 2, c. 31, gave a single justice power to take the examination of any single woman, in cases of bastardy, if she should *charge* any person with having gotten her with child, it was held, that the statute did not incidentally give the justice power to *compel* the woman to be examined (d). So, although the justices of the peace had jurisdiction given them, by the 6 Geo. 3, c. 25, to determine disputes between masters and servants employed in manufactures or trades, this did not give them jurisdiction to settle disputes between masters and household servants (e). The proceedings, also, under an authority so created must be strictly conformable to the regulations prescribed by the special law in each instance, from which all their force is derived (f).

This is the first requisite, the absence of which can by no means be cured. But besides this, there are other rules applying generally to the system of summary convictions, which are not less necessary to be attended to in the

(b) 42 & 43 Vict. c. 49, s. 51.

(c) *Agard v. Cavendish*, Saville, 134.

(d) *Ex parte Martin*, 6 B. & C. 80; 9 Dowl. & Ryl. 65. Not even an obvious omission in an act of parliament can be supplied, except by the legislature. *Under-*

hill v. Longridge, 29 L. J., M. C. 65. See also *Re Wainwright*, 1 Phil. 261; 12 L. J., Chan. 426.

(e) *Kitchen v. Shaw*, 6 A. & E. 729.

(f) *Coles' case*, Sir W. Jones, 139, 170; 1 Sh. 14.

exercise of this important jurisdiction. These it is now proposed to consider in the following order:—1st. As they relate to the duty of magistrates in the examination, hearing and judgment of offences in a summary way; 2ndly. To the form of recording the proceedings, or what is usually termed the conviction; 3rdly. The steps subsequent to the judgment, including the various processes of execution, as well as those of appeal; and, lastly, what relates to the protection and indemnity of magistrates, and their subordinate officers, in the exercise of this duty.

The usual mode of proceeding is by information, summons, and judgment; which will be examined separately. But it may be proper, in the first place, to state those rules which concern the jurisdiction of the magistrates.

SECT. 2.—*Of the Limits of Jurisdiction within which Justices may act or their Process be available.*

The residence
of the magis-
trate.

The authority of justices of the peace appointed by commission from the crown is limited to the respective counties therein specified. And that of magistrates in separate jurisdictions is confined to their respective districts: it is in no case attached to the person, so as to be capable of being exerted elsewhere than within those limits. It is laid down by *Dalton* (g), that a justice of the peace, for the time that he shall make his abode, or be out of the county where he is in commission, cannot intermeddle to take any recognizance or any examination, or otherwise exercise his authority in any matter that shall happen within the county where he is in commission; neither can he cause one to be brought before him out of the county where he is in commission; “for, being out of the county where he is in commission, he is but as a

private man." A distinction, however, is remarked by Mr. Serjeant *Hawkins* (*h*), between *coercive* or *judicial* and *ministerial* acts (*i*); the former of which cannot be performed by magistrates out of their own county, but the latter, it is said, may. And it is affirmed by the same authority, that recognizances and informations, voluntarily taken by magistrates out of the county, &c., are good. This opinion is founded on the following case:—The question was as to an oath made by a person robbed, (preparatory to an action against the hundred on the statute of *Hue and Cry*, 13 Edw. 1,) before a justice of the county, as required by 27 Eliz. c. 13. The latter statute directed the oath of the robbery to be made before some justice of the county where the robbery was committed, and inhabiting within the hundred. The oath, in the present case, was made in London, before a magistrate of the county of Berks (where the robbery was), whose usual residence was in the hundred, but who, at the time of receiving the oath, resided in London. The Court of Queen's Bench, and afterwards all the judges upon conference, held this sufficient (*j*). It was said to be the usual course for justices to take informations against offenders in any place out of the county, to prove offences in the county where they are committed. It must, however, be considered as doubtful, whether a magistrate can, out of the county, properly receive an information upon oath to found a subsequent proceeding before himself of a penal nature; and it is clear, that any coercive or judicial act would be altogether void unless done within the county (*k*).

The distinction above suggested was recognized and

(*h*) 2 Hawk. P. C. 47, 8th edit. by Curwood, and see 2 Hale, P. C. 51; Com. Dig. Justices of Peace (B.) 1; 4 Bac. Ab. 619, 7th edit. tit. Justices of Peace (E.) 5.

(*i*) See post, p. 21, n. (*m*).

(*j*) *Helier v. Benhurst*, Cro. Car.

211; Jones, 239; *R. v. All Saints, Southampton*, 7 B. & C. 788; and see *Bosanquet v. Woodford*, 5 Q. B. 310.

(*k*) *Helier v. Benhurst*, *supra*, and Dalt. c. 25.

acted upon in two cases under the stat. 56 Geo. 3, c. 139. By the first section of that act, before any child was bound apprentice by the parish overseers, he was to be taken before two justices of the county, &c., wherein the parish was situate, and they were to inquire into the propriety of binding him apprentice to the person proposed, and if upon examination and enquiry they thought it proper that he should be so bound, they were required to make an order declaring that such person was a fit person, and that the overseers were at liberty to bind him accordingly, and after such order had been made, the justices were to sign their allowance of the indenture of apprenticeship before the same was executed.

An allowance of the indenture under this section by the same justices who had made the order for binding the apprentice was held to be valid, although the place where it was signed did not appear upon the instrument, as it was in discharge of a purely ministerial function and not so much an act of jurisdiction as a voucher of that upon which judgment had been already exercised (*l*).

By the second section of the above statute, where the person to whom the child is bound resides in a different county or jurisdiction of the peace from that whence he is bound, the indenture must be also allowed by the justices of the county into which he is bound, but before such allowance, notice is to be given to the overseers of the parish in which the child is to serve. The allowance under this section by the justices of the county, in which the apprentice was to serve, was held to be a judicial act, as they were invested with a discretionary veto in the matter, and must hear and decide upon such objections to the binding of the apprentice as might be raised by the overseers to whom notice had been given. In this case, therefore, the rule applied, that justices acting judicially

(*l*) *R. v. Stainforth*, 11 Q. B. 66; B. 526; 24 L. J., M. C. 53.
see *Staverton v. Ashburton*, 4 El. &

must appear to be acting in their jurisdiction as well as for it (*m*).

If a statute refers a matter to "any two justices," they

(*m*) *R. v. Totness*, 18 L. J., M. C. 46; *R. v. Stockton*, 7 Q. B. 520; *R. v. Newton Ferrers*, 9 *Id.* 32; *R. v. Blathwayt*, 3 D. & L. 542; *R. v. Holborn Union*, 6 E. & B. 715; 25 L. J., M. C. 110. The test of an act being judicial or ministerial is, whether the justices are entitled to withhold their assent, if they think fit, or whether they can be compelled by mandamus or rule to do the act in question. (See per Wightman, J., in *Starvorton v. Ashburton*, 24 L. J., M. C. 53.) It may be useful to collect here other instances besides those in the text. The following acts are judicial:— Allowance of the indenture of a parish apprentice under 43 Eliz. c. 2, *R. v. Hamstall Ridware*, 3 T. R. 380. Admitting to bail, *Linford v. Fitzroy*, 13 Q. B. 240, 247. Making an order for payment of expenses of a special constable, *R. v. Cheshire Lines Committee*, L. R. 8 Q. B. 344; 42 L. J., M. C. 100. Taxation of costs, *R. v. Recorder of Cambridge*, 8 El. & Bl. 637; 27 L. J., M. C. 160. Entering into recognizances for the trial of a controverted election of a member of parliament, under 31 & 32 Vict. c. 125, Bar. & Aust. Election Cases, 552; Hansard's Parl. Deb. 3rd series, vol. 59, p. 1130.

In general, the issuing of a warrant of distress or commitment is a judicial act, as the party against whom it is sought should have an opportunity of showing that he has obeyed the order or conviction which the warrant is intended to enforce; *R. v. Benn*, 6 T. R. 198; *R. v. JJ. Hertfordshire*, 42 L. J., M. C. 153; *Harper v. Carr*, 7 T. R. 270; *Painter v. Liverpool Gas Company*, 3 A. & E. 433; *Skingley v. Surridge*, 11 M. & W. 503; *Hammond v. Bendyshe*, 13 Q. B. 869; *Kinning's case*, 10 Q. B. 730; 4 C.B. 507; *Jay v. Halksworth*, 2 Com. L. Rep. 1776. See where the warrant

(under special circumstances) was allowed to issue at once, *Re Hammersmith Rent-charge*, 4 Exc. 87, and *Arnold v. Dimsdale*, 2 El. & Bl. 580; 22 L. J., M. C. 161. As a general rule, if the order which the magistrate is asked to enforce is good on its face, he cannot inquire into its validity, and this is so, although the statute does not allow an appeal; *R. v. JJ. Yorksh.*, 31 L. J., M. C. 189; *Ex parte May*, *Id.* 161; 2 B. & S. 426; *Ex parte Williams*, 2 El. & Bl. 84; 22 L. J., M. C. 125; *Luton Board of Health v. Davis*, 29 L. J., M. C. 173, 175, n. He should give the party against whom the order was made, an opportunity of stating whether it has been obeyed or appealed against, for that is consistent with the order itself; but beyond that, the function of the justice in such cases is merely ministerial. Thus, under the Public Health Act, 1875, the local authority is authorized to require persons to remedy defective drains, &c., and such persons on non-compliance are liable to penalties. The power to determine the nature and extent of the works to be done to the drains is vested in the local authority, and their decision cannot be reviewed by the justices; *Hargreaves v. Taylor*, 32 L. J., M. C. 111. The duty of a magistrate on such occasions is analogous to that of enforcing poor-rates, which is simply to see that the rate is good on the face of it, and unappealed against, that the person rated was in the visible occupation of the property rated within the parish, and that he has not paid the assessment. He cannot go into the question of beneficial occupation, which is matter only for the quarter sessions on appeal. See *Ex parte May*, 2 B. & S. 426; 31 L. J., M. C. 162; *R. v. Kingston-on-Thames*, E., B. & E. 256; 27 L. J., M. C. 199; *R.*

must be justices having jurisdiction according to the rules of the common law or by statute, and such words do not enable them to act out of their jurisdiction, either in respect of its local limits or otherwise (*n*).

The following rules are deducible from the statutes which define the limits within which magistrates may act or their process be available.

v. JJ. Warwicksh., 29 *Id.* 176. But if an order, sought to be enforced, is bad on its face, the justice may refuse to issue his warrant. Thus an order, under the Metropolitan Building Act, 1855, requiring the owner of a structure to take it down and repair it, should show that the owner was summoned to answer the complaint and that the complaint was true; and where these statements are omitted, the justice is entitled to consider the validity of the order; *Labalmondiere v. Frost*, 1 Ell. & Ell. 527; 28 L. J., M. C. 155.

The granting of the certificate of dismissal of a complaint for an assault under 24 & 25 Vict. c. 100, s. 44, is a ministerial and not a judicial act; the magistrate is therefore bound to grant it on application of the party entitled to it, and this whether the application be made at once or in the absence of the other party. *Hancock v. Somes*, 28 L. J., M. C. 196; *Costar v. Hetherington*, 28 L. J., M. C. 198; *Reed v. Nutt*, 24 Q. B. D. 669.

A justice is bound to issue a distress warrant against the guardians of a union who have been surcharged by the auditor of accounts of a poor-law union and have not appealed against it, on summons and proof of so much as is required by sect. 9 of the 11 & 12 Vict. c. 91. *R. v. Finnis and others*, 28 L. J., M. C. 201. It need scarcely be said, that where power is conferred upon justices to issue a distress warrant, "if they shall think fit," they must not refuse to issue it merely because they think the Act of Parliament does an injustice in giving such

power in the particular case. *R. v. Boteler*, 33 L. J., M. C. 101.

If an inquiry into the compensation due to a claimant for land injuriously affected by a railway company takes place before a jury pursuant to the 8 & 9 Vict. c. 18, s. 68, and the costs are settled by one of the Masters of the Queen's Bench, under sect. 52, the decision of the Master as to amount cannot be reviewed by a magistrate, who on application for a distress warrant to levy the costs, under sect. 53, is bound to consider the Master's decision as final; *The Metropolitan Railway Company v. Turnham*, 32 L. J., M. C. 249.

The backing of a warrant is merely ministerial, *post*, p. 25. So is the allowance of a poor-rate, *R. v. Hamstall Ridware*, *supra*; *R. v. JJ. Dorchester*, 1 Stra. 393, and of a pauper's certificate, *R. v. Austrey*, 6 M. & S. 319, 321. See further upon judicial and ministerial acts, 11 & 12 Vict. c. 44, ss. 3, 4, 6; 15 Vin. Ab. tit. "Judicial;" *R. v. Ledgard*, 8 A. & E. 545; *Wilder v. Morris*, 22 L. J., M. C. 4; *R. v. Law*, 7 E. & B. 366; 26 L. J., Q. B. 126; *Baker v. Cave*, 1 H. & N. 674; 26 L. J., Exch. 190; *Cooper v. Wandsworth*, 32 L. J., C. P. 187. Persons exercising judicial functions, but being also required to perform ministerial acts, may be sued for damage occasioned by their neglect to perform the latter, and formerly no allegation of malice was necessary in such action. *Fergusson v. Kinnoull*, 9 Cl. & Fin. 251; *Green v. Bucklechurch*, 1 Leon. 323.

(*n*) *Re Peerless*, 1 Q. B. 143, 153.

I. County justices may act as such within any city or other precinct having exclusive jurisdiction, situate in, surrounded by, or adjoining to, the county, riding or division for which they are appointed. Thus, with regard to county magistrates whose residence happens to be locally situated in cities or places which are distinct in point of jurisdiction from the county at large, it is provided by 9 Geo. 1, c. 7, s. 3, "for the greater ease of justices of the peace authorized to act for any county," that "if any such justice of the peace shall happen to dwell in any city or other precinct that is a county of itself, situate in the county at large for which he shall be appointed a justice, although not within the same county, it shall be lawful for any such justice to grant warrants, take examinations, and make orders, for any matters which one or more justices of the peace may act in, at his own dwelling-house, although such dwelling-house be out of the county where he is authorized to act as a justice, and in some city or other precinct adjoining that is a county of itself."

County justices residing in city, &c. of exclusive jurisdiction.

And this provision is extended by stat. 11 & 12 Vict. c. 42, s. 6 (o), which enables justices acting for any county at large, or for any riding or division thereof, to act as such in any place within any city, town or other precinct being a county of itself, or otherwise having exclusive jurisdiction, and situate within, surrounded by, or adjoining to, any such county, riding or division. It is, however, expressly provided, that county justices are not to intermeddle in any matter arising within the separate jurisdictions therein mentioned.

II. A justice commissioned for two adjoining counties may act in either upon matters arising in the other, provided that he is in one of such counties at the time when he so acts. Thus by 11 & 12 Vict. c. 42, s. 5, in cases

Justices for two adjoining counties.

(o) This section and sects. 5 and 7 of 11 & 12 Vict. c. 42 are incorporated with 11 & 12 Vict. c. 43,

by sect. 6 of the latter statute. See 26 & 27 Vict. c. 77.

where a justice of any county, riding, division, liberty city, borough, or place (*p*), shall be also justice for a county, riding, &c., next adjoining thereto or surrounded thereby, he may act as such justice for the one county, &c., whilst he is residing or happens to be in the other of such counties, &c.

Borough
justices.

III. The jurisdiction of justices of boroughs and corporate towns is limited by the boundaries of the respective boroughs and corporate towns, but summons and warrants issued by borough justices may be served or executed in any county within which the borough is situate, or within any distance not exceeding seven miles from the borough (*q*).

Union work-
houses.

IV. For certain offences committed in the workhouses of unions comprising parishes of two or more counties, the justices of the county in which the workhouse is situate may commit the offender to the gaol of the county, &c., in which the parish to which he is chargeable is situate (*r*). And where a union extends into several distinct jurisdictions, every complaint by which the guardians thereof are affected, or in which they have any interest, is deemed for the purpose of jurisdiction to arise and exist equally throughout the union (*s*).

Warrants
executed on
fresh pursuit

V. A warrant to apprehend a defendant, so that he may

(*p*) See as to the meaning of the words "cities, liberties and towns corporate" in stat. 21 Jac. 1, c. 23, per Maule, J., *Terrant v. Baker*, 14 C. B. 199. See as to detached parts of counties, *post*, p. 28; and as to justices resident in "places" adjoining a highway district, see 27 & 28 Vict. c. 101, s. 29.

(*q*) 45 & 46 Vict. c. 50 (the Municipal Corporations Act), ss. 158, 223. The seven miles are to be measured in a straight line, and may be determined by the ord-

nance survey map, s. 231 (see p. 27, n. (*o*)). As to the jurisdiction of county magistrates over offences committed within a borough, and *vice versa*, see *post*, p. 35. Provision is now made for cities, towns or boroughs, containing not less than 25,000 inhabitants, to appoint stipendiary magistrates (26 & 27 Vict. c. 97).

(*r*) 7 & 8 Vict. c. 101, s. 57; and see 11 & 12 Vict. c. 110, s. 9.

(*s*) 30 & 31 Vict. c. 106, s. 27.

answer to an information or complaint, may be executed not only within the county in which the justice issuing the same has jurisdiction, but, in case of fresh pursuit, at any place in the next adjoining county or place, within seven miles of the borders of the former county, without being backed (*t*).

VI. Upon proof on oath of the handwriting of a justice issuing a warrant for the apprehension of any person, a justice for any place in England or Wales, in which the person against whom the warrant was granted is or is supposed to be, may indorse the warrant authorizing its execution within his jurisdiction (*u*). The backing of a warrant for this purpose is a purely ministerial act, and the justice who issues it is responsible for an arrest under it, though the warrant is backed and executed in another county (*x*). Backing warrants.

English warrants may be backed in Ireland, and *vice versa* (*y*).

English or Irish warrants may be backed in Scotland, and *vice versa* (*z*).

Any process issued under the Summary Jurisdiction Acts may, if issued by a court of summary jurisdiction in England and endorsed by a court of summary jurisdiction in Scotland, and *vice versa*, be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the endorsing court (*a*).

English warrants may be issued in the Isles of Man,

(*t*) 11 & 12 Vict. c. 43, s. 3.

(*u*) 11 & 12 Vict. c. 42, s. 11; 11 & 12 Vict. c. 43, s. 3; *R. v. Cump-ton*, 5 Q. B. D. 341. As to the form to be used in backing warrants, see Form 35, to Summary Jurisdiction Rules, 1886, *post*, Appendix.

(*x*) *Clark v. Woods and others*, 2

Exch. 395, and see *R. v. Kynaston*, 1 East, 117; *Dews v. Riley*, 11 C. B. 434

(*y*) 11 & 12 Vict. c. 42, s. 12. See *R. v. Nesbitt*, 2 D. & L. 529.

(*z*) 11 & 12 Vict. c. 42, ss. 14, 15.

(*a*) See Summary Jurisdiction (Process) Act, 1881, in Appendix.

Guernsey, Jersey, Alderney and Sark, and warrants from any of those islands may be backed in England (*b*). The indorsement in these islands is to be made by any officer within the district who has jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, *i.e.* by the bailiffs of Guernsey and Jersey respectively, or, in their absence, the lieutenant-bailiffs, the judge of Alderney, or, in his absence, any jurat within the island, and the senechal of Sark, or, in his absence, his deputy in the island (*c*). There is provision for indorsing Scotch or Irish warrants in these islands (*d*).

Where sufficient distress is not found within the jurisdiction of the justice granting a warrant of distress, it may be backed by the justice of any other county or place (*e*).

The warrants of magistrates within the metropolitan police district (*f*), for any matter arising therein, may be executed in any part of the kingdom without indorsement (*g*).

Qualification
and oaths.

Before a justice of the peace is competent to act, he is required by the 31 & 32 Vict. c. 72, s. 6, to take and subscribe the oath of allegiance, and the judicial oath (*h*). This is usually done at the quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice (*i*). There is now a general permission to affirm instead of taking the oath (*k*). The acts done by a justice, who has not duly qualified and taken the oaths at the sessions, are not absolutely void ;

(*b*) *Id.* s. 13.

(*c*) 14 & 15 Vict. c. 55, s. 18.

(*d*) 31 & 32 Vict. c. 107.

(*e*) 11 & 12 Vict. c. 43, s. 19.

(*f*) See as to this district, 10 Geo. 4, c. 44, s. 4, and 2 & 3 Vict. c. 47, s. 2.

(*g*) 2 & 3 Vict. c. 71, s. 17.

(*h*) For the form of the oaths, see ss. 2 and 4. For the form of solemn affirmation or declaration, see s. 11. Before whom to be taken, see 34 & 35 Vict. c. 48.

(*i*) 34 & 35 Vict. c. 48.

(*k*) 31 & 32 Vict. c. 72, s. 11; 51 & 52 Vict. c. 46, s. 1.

and therefore a person executing the warrant of such justice is not answerable in an action of trespass (*l*).

Justices appointed for a county require a qualification by estate; either by the possession of land of the clear yearly value of 100*l.*; or by being entitled to the reversion of lands of the clear yearly value of 300*l.* (*m*); or being a person of full age and otherwise eligible, by having during the two years immediately preceding his appointment, been the occupier of a dwelling-house in such county, assessed to the inhabited house duty at the value of not less than 100*l.* a year, and who has during that time been rated in respect of such premises (*n*).

Justices appointed for boroughs within the Municipal Corporations Act are not required to have any qualification by estate, nor need they be burgesses, but they must reside in the borough or within seven miles of it, or occupy premises in the borough (*o*). Justices of the metropolitan police courts and stipendiary magistrates need not have any qualification by estate (*p*).

The Crown may include in any commission of the peace for any borough, city, county, riding, or division of a

(*l*) *Margate Pier Company v. Hannam*, 3 B. & A. 266. See *R. v. J.J. Herefordsh.* 1 Chit. R. 709. 34 & 35 Vict. c. 48, provides that, where by that and other acts any person is prevented or relieved from taking any oath, or making or subscribing any declaration, the taking, making, or subscribing of which forms a condition precedent or subsequent to the attainment by such person of any office, privilege, exemption, or other benefit, or the due performance of any act, such person shall, nevertheless, on complying with the other conditions, if any, attached to the attainment of such office, privilege, exemption, or other benefit, or the due performance of such acts, be entitled thereto, and be deemed duly to have performed such act, in the same manner as if the condition relating to

such oath or declaration, and any directions as to the certificate or registration of the taking of such oath, or making or subscribing such declaration, or otherwise, had been fulfilled and performed.

(*m*) 18 Geo. 2, c. 20.

(*n*) 38 & 39 Vict. c. 54. The act provides that no justice appointed in respect of the qualification contained in that act, shall continue to act as a justice of the peace for any county after he shall have ceased for twelve months to have such qualification. As to the penalties incurred by an unqualified person acting as a justice of the peace, see 5 Geo. 2, c. 18, and 18 Geo. 2, c. 20.

(*o*) 45 & 46 Vict. c. 50, s. 157. As to how the distance of seven miles is to be measured see *ante*, p. 24, n. (*q*).

(*p*) 10 Geo. 4, c. 44, s. 1.

county where a county court is holden, the judge of such court for the time being, and he may and shall act in the execution of the office of justice of the peace for the said borough, city, county, riding, or division, although he may not be qualified in such manner as is required by law in the case of other persons being justices of the peace (q).

SECT. 3.—*Of the Local Limits of the Jurisdiction, as to the Offence.*

Offences
within the
county.

The jurisdiction is further limited, as a general rule, to *offences* committed *within* the county (r); and though an act expressly directs the offence to be inquired of by justices residing near the place where it is committed (s), or by “any two justices” (t), that does not give jurisdiction to any other than justices of the *county* within which the offence was committed.

Detached
parts of
counties.

A county justice, however, may act as such in any matter relating to a detached part of another county, surrounded wholly or in part by the county for which he is appointed (u).

(q) 51 & 52 Vict. c. 43, s. 17.

(r) An offence may be committed within a county, although some of the acts which are in furtherance of it, and which by relation back render the offence complete, are committed in another county. An artificer, to whom wages were due, was paid by a note authorizing him to receive payment in goods. The note was delivered in one county, but the goods in pursuance thereof were given to the workman in another county. It was held that the master was rightly convicted of an offence against the Truck Act (1 & 2 Will. 4, c. 37) by the justices of the former county, as under the circumstances the offence was complete when the note

was given. Mr. Justice Wightman, however, said that there might have been a difficulty if the goods had not been delivered; *Ashersmith v. Drury*, 28 L. J., M. C. 5. In proceedings before justices for the prevention or removal of nuisances under the Public Health Act, 1875, s. 96, both the cause and effect of the nuisance must exist within the area of the local jurisdiction. *R. v. JJ. Essex*, 28 L. J., M. C. 22.

(s) *Talbot v. Hubble*, 2 Str. 1154; *R. v. Chandler*, 14 East, 267.

(t) *Re Peerless*, 1 Q. B. 143, 153.

(u) 2 & 3 Vict. c. 82, s. 1. The 2nd section provides for the payment of expenses incurred in the prosecution of offenders in such

For the purposes of the trial of any offence punishable on summary conviction under the Summary Jurisdiction Act, 1879, or under any other act, whether past or future, the following provisions shall have effect—

General provisions as to local jurisdiction of courts of summary jurisdiction.

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more courts of summary jurisdiction, such offence may be tried by any one of such courts.

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts of summary jurisdiction, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court of summary jurisdiction, such offence may be tried by any one of such courts.

(3.) Where the offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court of summary jurisdiction through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre or other part of the highway, road, river, lake, canal or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts of summary jurisdiction, a person may be tried for such offence by any one of such courts.

(4.) Any offence which is authorized by this section to be tried by any court of summary jurisdiction may be

cases; and by the 3rd section the word "county," when used in the act, is to be taken to include every riding, division and part of a

county having a separate commission of the peace. See also 11 & 12 Vict. c. 42, s. 7; 21 & 22 Vict. c. 68.

dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court (*x*).

Where a person is charged with an indictable offence mentioned in the first schedule to the Summary Jurisdiction Act, 1879, before a court of summary jurisdiction for any county, borough or place, and the court have jurisdiction to commit such person for trial in such county, borough or place, although the offence was not committed therein, such court shall also have jurisdiction to deal with the offence summarily in pursuance of that act (*y*).

Railways
Clauses, &c.
Consolidation
Acts—land in
two juris-
dictions.

Union in
several juris-
dictions.

Salmon
fisheries—
river between
two counties.

Offence
committed
at sea.

Under the several Public Works Consolidation Acts, if questions arise in respect of lands situate not wholly in one jurisdiction, they may be decided by a justice in any county, &c., in which any part of such lands is situated (*z*). And where a union extends into several distinct jurisdictions, every matter or complaint by which the guardians thereof are affected or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union (*a*). And if an offence against the statutes relating to the salmon fisheries be committed in part of a river which runs between, or forms the boundary of, two adjoining counties, it is cognizable by any justice for either of such counties (*b*). An offence against the same statutes committed on the sea coast or at sea beyond the ordinary jurisdiction of any justice of the peace, is deemed to have been committed within the body of any county abutting on such coast or adjoining such sea (*c*).

(*x*) 42 & 43 Vict. c. 49, s. 46.

(*y*) 42 & 43 Vict. c. 49, s. 45.

(*z*) See the Lands Clauses (8 Vict. c. 18, s. 3), Railways (8 Vict. c. 20, s. 3), Markets and Fairs (10 & 11 Vict. c. 14, s. 3), Cemeteries (10 & 11 Vict. c. 65, s. 3), Waterworks (10 & 11 Vict. c. 17, s. 3), Harbours, &c. (10 & 11 Vict. c. 27, s. 3), Clauses Consolidation Acts.

(*a*) 30 & 31 Vict. c. 106, s. 27.

(*b*) 24 & 25 Vict. c. 109, s. 36.

(*c*) *Id.* s. 37. An offence against the act "for providing a close time in the seal fishery in the seas adjacent to the eastern coasts of Greenland" (28 Vict. c. 18), is deemed to have been committed in the actual place, or in any place where the offender may for the time being be found.

By the acts for the preservation of sea birds and during the breeding season of wild birds, all offences under them committed within the jurisdiction of the Admiralty are to be deemed of the same nature and liable to the same punishments as if committed on land, and be dealt with in the county or place in which the offender shall be apprehended or be in custody; and in the information or conviction the offence may be alleged to have been committed "on the high seas." If the offence be committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions, or petty sessions, it may be prosecuted before any justices of the peace in either of such counties or districts (*d*).

According to the rule that a ship on the high seas is High seas. part of the territory to which she belongs, a bastard child of which a woman has been delivered on board an English ship is to be deemed born in England, and justices have jurisdiction to make an order of affiliation against the putative father resident in England (*e*).

That part of the sea which lies between high and low water-mark is within and a part of the adjoining county, Between high and low water mark whether the land is or is not covered with water at the time of the committing of the offence (*f*).

(*d*) 43 & 44 Vict. c. 35, s. 6.

(*e*) *Marshall v. Murgatroyd*, L. R., 6 Q. B. 31; 40 L. J., M. C. 7. The Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), provides for the punishment of indictable offences committed on the open sea within a certain distance of the coasts of the United Kingdom, and of all other parts of her Majesty's dominions, by a person, whether he is or is not a subject of her Majesty, and although they may have been committed on board or by means of a foreign ship. See also *R. v. Keyn*, 2 Ex. D. 63; 46 L. J., M. C. 17; *R. v. Anderson*, 1 C. C. R. 161; 38 L. J., M. C. 12.

(*f*) *Embleton v. Brown*, 30 L. J., M. C. 1; and see *R. v. Musson*, 8

Ell. & Bl. 900; 27 L. J., M. C. 100; and *Blackpool Board of Health v. Bennet*, 4 H. & N. 127; 28 L. J., M. C. 203. In *R. v. Cunningham and others*, 1 Bell, C. C. R. 66; 28 L. J., M. C. 66, it was decided that the Bristol Channel between the shores of Glamorganshire and Somersetshire, where it is about ten miles across, and where the one shore is visible from the other on a clear day, is within the counties by which it is bounded. Therefore, where an offence was committed on board of a ship in this part of the Channel, about a mile from the Glamorganshire shore, it was held to be committed within the body of the county of Glamorgan. See as to boundaries of parishes extending to the medium

Offender or goods being in a county where offence was not committed.

Some acts give jurisdiction to justices as well of the county where the offence is committed as of that in which the offender resides or is apprehended (*g*), or in which goods are found. Thus, the stat. 11 Geo. 2, c. 19, against the fraudulent removal of goods by tenants, empowers the landlord to exhibit a complaint before two justices of the county, &c., "residing near the place whence such goods were removed, or near the place where the same are found." Under these words it has been held, that if the goods be removed out of one county into another, the complaint may be made to two justices of the latter county (*h*).

For offences against the excise laws, jurisdiction is given by the 7 & 8 Geo. 4, c. 53, s. 65, to any two justices of the county where the offender is found or the goods are seized, &c. (*i*).

By the Merchant Seamen's Act, 1854, (17 & 18 Vict. c. 104, s. 520,) for the purpose of giving jurisdiction under it, every offence mentioned in it shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be (*k*).

The Contagious Diseases (Animals) Act, 1869 (which did not extend to Ireland), contained similar provisions, and where proceedings for a penalty under that act had been taken before the justices of the county of Pembroke, against the master of a vessel for having carried sheep on board such vessel without having the places used for such

flum of rivers and highways, *R. v. Llandulph*, 1 M. & Rob. 393; *R. v. Strand Board of Works*, 33 L. J., M. C. 33; *Id.* Q. B. 299.

(*g*) See as to indictable offences, 11 & 12 Vict. c. 42, ss. 1, 3; 24 & 25 Vict. c. 96, s. 114; and Archbold's Criminal Pleading and Evidence.

(*h*) *R. v. Morgan*, Cald. 158.

(*i*) Where the offence is committed, or the offender found, or

the goods are seized within the limits of the chief office of the inland revenue in London, the information should be laid before the commissioners of inland revenue or a metropolitan police magistrate; see 15 & 16 Vict. c. 61.

(*k*) As to offences by British subjects on board ship, see 18 & 19 Vict. c. 91, s. 21, and 30 & 31 Vict. c. 124, s. 11.

sheep divided into pens, and it was proved that the vessel arrived there with sheep not in pens; it was held that such justices had jurisdiction, as an offence had been committed in Pembrokeshire within their jurisdiction when the vessel arrived at Milford with the sheep without pens (*l*).

An act which declares that "every cause of complaint . . . shall be deemed to have arisen either in the place in which the same was actually committed or arose or in any place in which the person charged or complained against happens to be," does not give justices jurisdiction to convict a person summoned from without their jurisdiction for an offence that has taken place out of their jurisdiction; for such person by appearing before the justices in obedience to their summons, does not "happen to be" at such place and within their jurisdiction (*m*).

Offences against the customs committed on the high seas are deemed to have been committed "either in the place in which the same actually was committed, or in any place on land where the offender may be or be brought" (*n*). Where the attendance of any justices, having jurisdiction in the county where such offences are committed, cannot be conveniently obtained, any magistrate of any neighbouring or adjoining county to that in which the offence was deemed to have been committed, may hear and determine any information exhibited before him (*o*). As jurisdiction must always appear upon the face of summary proceedings (*p*), a conviction for an offence committed on the high seas, where *prima facie* justices have no jurisdiction, must shew the special facts which give it (*q*). Thus, where the offenders were taken

(*l*) *Muir v. Hore*, 47 L. J., M. C. 17; 37 L. T. 315.

(*m*) *Johnson v. Colam*, L. R., 10 Q. B. 544; 44 L. J., M. C. 185; 23 W. R. 697.

(*n*) 39 & 40 Vict. c. 36, s. 229; 24 & 25 Vict. c. 96, s. 115; and c. 97, s. 72.

(*o*) 39 & 40 Vict. c. 36, s. 230.

(*p*) See *Hollingworth v. Palmer*, 4 Exch. 267; *R. v. Totness*, 11 Q. B. 80; *R. v. Manchester and Leeds Railway Company*, 8 A. & E. 413; and Index, tit. "Jurisdiction."

(*q*) *Re Pierless*, 1 Q. B. 143, 154.

on board a smuggling boat within the harbour of Folkestone, which had an exclusive local jurisdiction, and were afterwards taken with the boat to the port of Dover, and convicted before two justices of that port and town, the conviction only stating that they had been found in a boat in the harbour of Folkestone, was held to be bad, as not showing jurisdiction (*r*). The justices of Folkestone, it seems, alone had authority to convict, as being the justices who resided near to the *first* port or place into which the vessel was carried.

In a later case it was held, under similar provisions, that the magistrates at the first place on land to which the party was carried had jurisdiction to try the offence, although the boat had been seized in a part of a river where other justices had jurisdiction (*s*).

A justice of the peace specially appointed under s. 10 of the Lunacy Act, 1890, to exercise the powers of the judicial authority under that act may exercise such powers, notwithstanding that he may not have jurisdiction in the place where the lunatic or alleged lunatic is (*t*).

Accessories.

Accessories may be convicted where the principal may be convicted, or where the offence of aiding, abetting, counselling or procuring was committed (*u*).

Exclusive liberties.

Although, on the one hand, the authority of county justices is confined to the limits of the county for which they are named, yet, on the other, it does not necessarily extend to all places within the county, if there be any district therein which possesses a separate and *exclusive* jurisdiction (*x*).

The words of the commission, however, "as well within liberties as without" (*y*), are held to give the justices for the county jurisdiction in such boroughs and towns cor-

(*r*) *Kite and Lane's case*, 1 B. & C. 101.

(*s*) *Re Nunn*, 8 B. & C. 644.

(*t*) 54 & 55 Vict. c. 65, s. 24.

(*u*) 11 & 12 Vict. c. 43, s. 5.

(*x*) Plow. 37; Lamb. 48; Dalt. c. 6, s. 7. See *ante*, p. 23.

(*y*) See the form of the commission, 3 Burn, J., tit. "Justices of the Peace."

porate as are not counties of themselves (z), though they have a magistracy of their own, unless the charter by which they are constituted imports an express exclusion of the county magistrates, by a clause of *non intromittant* (a). And, even if the charter contain such a clause, yet, unless the borough has a separate court of quarter sessions, the county justices have jurisdiction within it (b). If, however, the borough was exempt from their jurisdiction before the passing of the Municipal Corporations Act (9th Sept. 1835), and there is also a separate court of quarter sessions, the county justices are still excluded from it (c). There is no doubt that the crown may grant commissions of the peace for any particular district in a county; nor that such subdivision may have justices of its own, whose authority excludes the jurisdiction of the justices for the county at large (d). But the exclusion of the county magistrates has always been jealously regarded, and nothing but express words are deemed capable of having that effect (e). Therefore, where a borough had possessed an exclusive jurisdiction under two successive charters, containing *non-intromittant* clauses, and a third charter vested the authority of justices of the peace in the mayor, bailiffs, and burgesses, *in tam amplis modis et consimilibus modo et formâ prout præantea in eodum*

(z) Crompt. 8. See *Arnold v. Gausson*, 8 Exch. 463; *Arnold v. Dimsdale*, 2 E. & B. 580; 22 L. J., M. C. 161.

(a) *Id. it.* See also *Were v. Devon*, 34 L. J., M. C. 47, and *R. v. East Loe*, 31 L. J., M. C. 245.

(b) 45 & 46 Vict. c. 50, s. 154, and see *Candlish v. Simpson*, 1 B. & S. 357; 30 L. J., M. C. 178; 2 Hale, P. C. 47; 2 Hawk. P. C. c. 8, ss. 47, 48. It is not necessary that a borough should have a separate court of quarter sessions in order to be a "town corporate" within the Alehouse Licensing Act, 9 Geo. 4, c. 61, s. 1; *Brown v. Nicholson*, 5 C. B., N. S. 468; 28 L. J., M. C.

49. Notice of licensing meeting by borough and county justices; *Id.* The law officers of the crown have recently given an opinion that in a borough, not having a separate commission of the peace, the mayor has precedence over county justices sitting in the borough and exercising jurisdiction over it.

(c) 45 & 46 Vict. c. 50, s. 154.

(d) *R. v. Sainsbury*, 4 T. R. 456; *Blankley v. Winstanley*, 3 T. R. 279; *Talbot v. Hubble*, 2 Str. 1154; *Arnold v. Gausson*, and *Arnold v. Dimsdale*, *supra*.

(e) 4 T. R. 456; 3 T. R. 287; 8 Exch. 463, 476, 478.

burgo usitatum et consuetum fuit, it was held, that, notwithstanding such reference to the former charters, the county magistrates could not be excluded; inasmuch as their jurisdiction was not taken away by express terms (*f*).

In such cases, therefore, the magistrates of the borough and the county justices possess concurrent jurisdiction in the borough (*g*).

In a case where a municipal borough had no separate commission of the peace, and no court of quarter sessions, the mayor and ex-mayor having jurisdiction in the borough as justices, and the justices in the county at large having concurrent jurisdiction, it was held, that the mayor and ex-mayor, while acting as justices for the borough acted as county justices, with their powers limited to a particular locality, and that penalties imposed by them must, in the absence of directions in the penal statute, be paid to the borough treasurer (*h*).

But where the jurisdiction of the county justices is taken away by express and adequate words in the charter for that purpose, and there is a separate court of quarter sessions, any act of theirs within the franchise is not only a contempt, but is wholly void (*i*); and, notwithstanding the doubt intimated by Lord *Hale* and Mr. Serjeant *Hawkins* (*k*), who make it a question whether the act of the county justices be void, or only such as subjects them to punishment as for a contempt of the king's prohibition, the law seems to be now settled by express authorities of a more recent date (*l*).

The union of liberties with the counties in which they are situate is facilitated by 13 & 14 Vict. c. 105 (*m*).

(*f*) 3 T. R. 279.

(*g*) 4 T. R. 456.

(*h*) *Mayor of Reigate v. Hart*, L. R., 3 Q. B. 244; 37 L. J., M. C. 70.

(*i*) *Talbot v. Hubble*, 2 Str. 1154.

(*k*) 2 Hawk. P. C. 48, 8th ed.; 2

H. H. 47.

(*l*) *Talbot v. Hubble*, 2 Str. 1154, which is recognized as established law in the subsequent cases of *Blankley v. Winstanley*, 3 T. R. 279, and *R. v. Sainsbury*, 4 Id. 456.

(*m*) See sects. 4 and 10.

Justices of a borough have the same jurisdiction over offences committed within the borough as county justices have by virtue of any local or general act of parliament with respect to offences committed within the county (*n*).

Besides the separate jurisdiction of boroughs, towns corporate, and cities which are counties of themselves (*o*), there are also other districts, or subdivisions of counties, which have distinct magistrates, such as the divisions of Lincolnshire, the ridings of Yorkshire, the district of the Isle of Ely, &c. It may be proper, therefore, to notice, that with regard to remedial statutes which were intended for the benefit of the kingdom at large, and which are appointed to be executed by "any justices of the *county, city, or town* corporate, where the offence may be committed," the effect of such a provision is held to be, to give jurisdiction to all persons acting as justices in the district or division where the offence is committed, though that particular kind of district or division be not among those enumerated (*p*).

SECT. 4.—*Of Jurisdiction qualified as to Number, Description and Interest of Justices.*

The hearing as to cases arising under acts prior to the Summary Jurisdiction Acts, 1879, takes place before the number of justices prescribed by the particular statute, authorising the conviction or order, or more, or before one or more if the statute be silent on the point. But as to cases arising under that act or any future act, the court must consist of two or more justices (*q*). Number necessary.

An authority given by statute to *two* cannot be executed

(*n*) 45 & 46 Vict. c. 50, s. 158.

(*o*) The courts will take judicial notice that certain cities are counties of themselves. *R. v. St. Maurice*,

16 Q. B. 908.

(*p*) *R. v. Stevens*, Cald. 302.

(*q*) 42 & 43 Vict. c. 49, s. 20.

by *one* justice (*r*), but if given to one justice, it may be executed by any greater number (*s*). If the complaint be directed to be made to any justice, though the statute should require the final determination to be by two, the complaint is well lodged before one (*t*).

One justice may in all cases receive an information or complaint and grant a summons or warrant thereon, and issue a summons or warrant to compel the attendance of any witnesses, and do all other necessary acts preliminary to the hearing, even where by the statute in that behalf the information or complaint must be heard and determined by two or more justices (*u*). So, by the same section, after the case has been heard and determined, one justice may issue all warrants of distress or commitment thereon, and it is not necessary that the justice who so acts before or after the hearing should be the justice or one of the justices by whom the case is heard and determined (*x*); and by sect. 12, every information or complaint is to be heard and determined by one, two, or more justices as shall be directed by the statute upon which the information or complaint is framed or such other statute as there may be in that behalf.

Up to 1879, a single justice sitting in any place which *ipso facto* became an open court, possessed the full power

(*r*) Dalt. c. 6; 4 Co. 46. It is said by Dalton, cap. 6, "That though a statute appoints a thing to be done by two or more, if the offence be *any misdemeanor or matter against the peace*, then, upon complaint made of the offence to any one of the justices, it seemeth that one of those justices may grant out his warrant to attach the offender, and bring him before the same, or any other justice, to find surety for his appearance at the sessions. But one justice alone may not in anywise meddle to hear and determine."

(*s*) *Halton's case*, 2 Salk. 477; Dalt. c. 6, s. 8; *R. v. Weale*, 5 C. &

P. 135.

(*t*) *Ware v. Stanstead*, 2 Salk. 488; and n. (*r*), *ante*.

(*u*) This provision will not, it seems, apply where the statute under which the proceedings are taken expressly requires more than one justice to take the information, or to do any other of the specified acts; *R. v. Griffin*, 9 Q. B. 155, upon similar words in 3 Geo. 4, c. 23. See also *R. v. Russell*, 13 Q. B. 237.

(*x*) See *Jones v. Gurdon*, 2 Q. B. 600, 613; *Tarry v. Newman*, 15 M. & W. 645, 654; *Re Ramsden*, 3 D. & L. 748; *R. v. Wilcox*, 7 Q. B. 317, 339.

of summary jurisdiction, except in those numerous cases where the presence of two justices was expressly required by statute. The exception is now made the rule. A court of summary jurisdiction now can only sit either in a petty sessional court-house, or in an occasional court-house specially appointed. The jurisdiction of dealing summarily with indictable offences is limited to two or more justices sitting in a petty sessional court-house, on days specially appointed. The jurisdiction in other summary cases—*i. e.*, the power to give the full sentence of fine and imprisonment—is limited to two or more justices sitting in a petty sessional court-house on any day. A single justice, sitting in a petty sessional court-house, and any court, whether composed of one or more justices, sitting in an occasional court-house, can only sentence to imprisonment for fourteen days and a fine of twenty shillings. These regulations apply to cases arising under any act prior to the Summary Jurisdiction Act, 1879. As to cases arising under any future act, a single justice will have no power whatever of summary jurisdiction (*y*).

Metropolitan police magistrates, city of London magistrates, and stipendiary magistrates have within their jurisdiction power in most cases to do alone whatever is authorized to be done by one or more justices (*z*).

Metropolitan police, city and stipendiary magistrates.

Wherever the concurrence of two is requisite for any judicial act, they must be present and acting together

Concurrence of justices.

(*y*) 42 & 43 Vict. c. 49, s. 20.

(*z*) 11 & 12 Vict. c. 43, ss. 33, 34; 21 & 22 Vict. c. 73; 2 & 3 Vict. c. 71, s. 14; 3 & 4 Vict. c. 84. By 11 & 12 Vict. c. 43, s. 34, the Lord Mayor of London, or any alderman of the said city, sitting at the Mansion House or Guildhall justice rooms, may do alone any act which by any law then in force or by any law, not containing an express enactment to the contrary, thereafter to be made is directed to be done by more than one justice. By 3 & 4 Vict. c. 84, s. 6, two jus-

tices in the metropolis have in general the same power as a metropolitan police magistrate; see also sect. 15. It has, however, been held that sect. 13, which gives a metropolitan police magistrate power to send a constable to view deserted premises for the purpose of giving possession under 11 Geo. 2, c. 19, does not give the same power to two justices in the metropolis or to an alderman of the city of London; *Edwards v. Hodges*, 15 C. B. 477; 1 Jur., N. S. 91; 24 L. J., M. C. 81.

during the whole of the hearing and determination of the case (a).

Justices in
quarter
sessions
originating
convictions.

With regard to the power of the justices *in sessions* to originate convictions on penal statutes, the rule laid down by *Holt*, C. J., is, that if authority be given to two justices to do an act, and from that act there is no appeal, it may commence at the sessions; but if an appeal be given, it cannot begin there (b).

Particular
description
of justices.

Though the majority of penal statutes give authority generally to all justices of the peace, without distinction, which implies an equal power in all, within the limits of their respective commissions (c), yet, as some acts point out those of a particular description, it may be proper to take notice in what cases such selection is *imperative*, and excludes all others, and where it is considered to be merely *directory* (d).

(a) 11 & 12 Vict. c. 43, s. 29; and see *Billings v. Prinn*, 2 Bl. Rep. 1017; *R. v. Howarth*, 2 Bott. 640; *R. v. St. Aldwins*, Burr. Sess. C. 136; *R. v. Arnold*, 1 Str. 101; *R. v. Great Marlow*, 2 East, 244; *Battye v. Gresley*, 8 Id. 319; *R. v. Forrest*, 3 T. R. 38; *R. v. Hamstall-Ridcare*, 3 Id. 380; *R. v. Stotfold*, 4 Id. 596; *R. v. Llanwinio*, Id. 473; *R. v. Winwick*, 8 Id. 454; *Penney v. Slade*, 5 Bing. N. C. 319, 323; *Re Lord*, 1 Jur. N. S. 893; Bac. Ab. vol. 4, p. 618, tit. "Justices." This is analogous to the duty of arbitrators in making an award; Russell on Arbitration, 217 (7th ed.). So where a view is required to be had by two justices, it should be a joint view; *R. v. JJ. Cambridgesh.*, 4 A. & E. 111. Where a verbal adjudication was made by two justices in petty sessions and the formal order, being afterwards drawn up, was signed by one on the 1st of March, and by the other on the 3rd, it was held to be valid; *Ex parte Johnson*, 32 L. J., M. C. 193.

(b) *R. v. Randle*, 2 Salk. 470; *R. v. Bond*, 2 Show. 503; *R. v. Boughton*, 1 Ld. Raym. 426; 5

Burn, J., tit. "Sessions."

(c) Words in a statute authorizing "any two justices" to act, do not in all cases give jurisdiction to all justices in the county. See *Re Peerless*, 1 Q. B. 148.

(d) Whether words used in a statute are compulsory or only directory depends on the subject-matter to which they are applied, and on the general scope and object of the statute, rather than on the use of any particular language in it. Words relating to the mode and time of procedure are in general words of direction only, unless negative or prohibitory words are used; see *Cole v. Green*, 6 M. & G. 872; *R. v. Sneyd*, 5 Jur. 962; *R. v. Sparrow*, 2 Str. 1123; *Wolverhampton Waterworks Company v. Hucksford*, 7 C. B. N. S. 795; 29 L. J., C. P. 121; *R. v. Mayor of Rochester*, 7 E. & B. 910; 27 L. J., Q. B. 45; 1 B. & A. 310; Sel. N. P. 1086 (12 ed.); *Wishart v. Fowler*, 4 B. & S. 674; 33 L. J., Q. B. 125; *Stapleton v. Haymen*, Id. Exc. 170; *Scott v. Durant*, 34 L. J., C. P. 81; or the words create a condition precedent to the exercise of judicial power; see *Christophersen v. Lotinga*,

It seems consistent with principle, as the power vested *Next justice.* in justices of the peace is of a special kind, that, where any matter is referred to a particular description of justices, the authority of all others should be excluded by that express designation (*e*). Where the statute prescribes any particular justice or description of justice, the justices must be shown to come within that description (*f*). And therefore, where a statute refers the matter to the *next* justice, no other but the one answering that description has any authority (*g*).

However, it has been held, in construing the acts which mention justices *in or near* the place where the offence was committed, that, notwithstanding that description, any justice of the county may take cognizance of the matter (*h*). The same construction has been put upon the words justices of the *division*, which are held to be merely directory, and not restrictive or qualificatory (*i*), and

In or near the place where, &c.

Justices of the division.

33 L. J., C. P. 121. The words in a statute "it shall be lawful" of themselves merely make that legal and possible which there would, otherwise, be no right or authority to do. Their natural meaning is permissive or enabling only. But there may be circumstances which may couple the power with a duty to exercise it. It lies upon those who call for the exercise of the power to show that there is an obligation to exercise it. *Julius v. Bishop of Oxford*, 5 App. Cas. 214; 49 L. J., Q. B. 577. Enabling words are always compulsory where they are words to effectuate a legal right. *Ibidem*. "May" held compulsory in *M'Dougal v. Paterson*, 11 C. B. 755; 21 L. J., C. P. 27; and see *Crake v. Powell*, 2 El. & B. 210; 21 L. J., Q. B. 183; *Davies v. Evans*, 9 Q. B. D. 238. The question, which is one of practical importance, is discussed in the notes to *Collins v. Blantern*, 1 Smith's L. C. 398 (9th ed.); see also *De Ponthieu v. Pennyfeather*, 5 Taunt. 634; 5 C. B. 654, n. (*a*); *R. v. Cousins*, 4 B. & S. 849; 33

L. J., M. C. 87, 88; *Thompson v. Harvey*, 4 H. & N. 254; 28 L. J., M. C. 163; *Costar v. Hetherington*, 1 Fl. & El. 802; 28 L. J., M. C. 198; *Agar v. Athenæum Assurance Society*, 3 C. B., N. S. 725; 27 L. J., C. P. 95, 101; Maxwell on Statutes.

(*e*) Dalt. c. 27, s. 8.

(*f*) *R. v. Brodhurst*, 32 L. J., M. C. 168.

(*g*) *Sander's case*, 1 Wms. Saund. 262; 2 Keb. 559; "neighbouring justice," 24 & 25 Vict. c. 96, s. 103.

(*h*) 2 Keb. 559; 3 Keb. 383; 1 Wms. Saund. 263; Bac. Ab. tit. "Justices of the Peace," (E.) 5. See *Ex parte Kile*, *ante*, p. 34.

(*i*) *Ashley's case*, 2 Salk. 480; 3 *Id.* 258, S. C.; *Anon.*, 2 *Id.* 473; *Anon.*, 12 Mod. 546. See *Sander's case*, 1 Wms. Saund. 263 d; *R. v. Chandler*, 14 East, 267; *ante*, p. 28; *R. v. Waghorn*, 1 Ell. & Bl. 647. In *R. v. Rawlins*, 8 C. & P. 439, an indictment for perjury committed on the hearing of an information under the Beer Act, 11 Geo. 4 & 1

therefore the act may be executed by any justice of the county. It is the same where the statute specifies justices *in or near* the parish or division (*k*). And if anything be directed to be done "*in the division by magistrates acting for the division*," any magistrate of the county present at a meeting in the division is competent for that purpose (*l*), but it must appear on the face of the proceedings that the meeting was held within the division (*m*). And by 35 & 36 Vict. c. 65, s. 3, the application for an order of affiliation must be made to a justice acting for the petty sessional division of the county, or for the city, borough or place within which the woman resides (*n*). The justices who are empowered to issue the summons and make the order upon the husband of a lunatic to contribute towards her maintenance, are those who have jurisdiction in the union, the guardians whereof shall make the application, and not the justices having jurisdiction in the place where he may dwell (*o*). Justices of the peace sitting and acting for one petty sessional division of a county have jurisdiction to commit for trial on a charge arising in another petty sessional division of the same county, and are not bound to remand such charge for

Will. 4, c. 64, s. 15, was held to be defective for not stating that the justices were acting for the division or place in which the beer-house was situate.

(*k*) *R. v. Price*, Cald. 305; *R. v. Loxdale*, 1 Burr. 447.

(*l*) *R. v. Price*, Cald. 307, per Ashurst, J.; *R. v. Rawlins*, 8 C. & P. 439.

(*m*) In *R. v. Martin*, 2 Q. B. 1037, it was held that an order of justices at special sessions, under 4 & 5 Vict. c. 59, s. 1, must show on the face of it that the road is within the division for which the special sessions are held; *R. v. JJ. Hertfordsh.*, 2 D. & L. 952: amendment allowed in this respect; *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. See *Wray v. Toke*, 12

Q. B. 492, 506, where a conviction under the Beer Acts (11 Geo. 4 & 1 Will. 4, c. 64, and 4 & 5 Will. 4, c. 85) was held valid, although it did not state the beer-house to be within the division for which the justices were acting, the statutory form given by the act not containing such statement. In that case also, the parish in which the house was stated to be, and the division, were of the same name. See *R. v. Preston*, 12 Q. B. 816; *R. v. Hickling*, 7 Q. B. 880; *Ex parte Allison*, 10 Exc. 561.

(*n*) *Hampton v. Rickard*, 43 L. J., M. C. 133; *R. v. Hughes*, 1 Dear. & B. C. C. R. 248; 26 L. J., M. C. 133.

(*o*) 39 & 40 Vict. c. 61, s. 20.

hearing in the division in which the offence was committed (*p*).

The boundaries of the several divisions of the county justices, and the holding of petty or special sessions, are now regulated by the 9 Geo. 4, c. 43; 6 Will. 4, c. 12; 12 & 13 Vict. c. 18, and 31 Vict. c. 22 (*q*).

The effect of the Boundary Act (9 Geo. 4, c. 43), is to transfer to the borough justices all jurisdiction, which the county justices before had, over places now included within the borough boundaries (*r*).

Subject to the rules and restrictions above mentioned, every justice of the peace is competent to exercise the summary authority committed by statute to justices of the peace generally: but that power is accompanied with this further qualification, that no magistrate, however duly authorized in all other respects, can act judicially in a case wherein he is himself a party. The plain principle of justice, that no one can be a judge in his own cause, pervades every branch of the law, and is as ancient as the law itself (*s*). This is so fundamental a maxim, as not to be overruled by any prescription (*t*). Lord *Coke*, and Lord *Holt*, both go so far as to question, whether even an

Disqualifica-
tion by
interest.

(*p*) *R. v. Beckley*, 20 Q. B. D. 187; 57 L. J., M. C. 22. "It is contended that the offence cannot be legally dealt with by magistrates acting in a different petty sessional division from that in which the offence was committed, but there is no such rule of law; for in dealing with an offence committed in the county, the magistrates for the county have jurisdiction throughout the county . . . although a similar state of facts must often have occurred, this is the first occasion on which such a point has been taken, and any doubt which may have existed ought to be finally laid at rest by the unanimous decision of the Court that there is nothing in the objection," per Coleridge,

C. J.

(*q*) See 5 Burn, J., tit. "Sessions." Every meeting of two justices, in one place, for business, in itself constitutes a petty sessions; *R. v. Martin*, 1 R. 8 C. L. 556; *R. v. Rarolins*, 8 C. & P. 439. It is not necessary to state in a warrant of commitment, under 11 & 12 Vict. c. 43, that the convicting justices were sitting at a place where the petty sessions were usually held; *Ex parte Allison*, *supra*.

(*r*) *R. v. JJ. Gloucester*, 6 Nev. & Man. 115; s. 158 of 45 & 46 Vict. c. 50.

(*s*) Co. Litt. 141 a; 8 Co. 118; Dalt. c. 173.

(*t*) *Ib.*; Hob. 87.

act of parliament has power to ordain that the same person shall be both party and judge (*u*).

The question whether proceedings tainted by the interest of the judge are absolutely void or voidable only, has been decided in the House of Lords (*x*). The Lord Chancellor had granted relief sought by a company in which he was a shareholder. It was held that he was disqualified on the ground of interest from sitting as judge in the cause, and that his decree must be reversed; but it was at the same time decided to be merely voidable, and not void (*y*).

There are also instances upon record of magistrates being punished by attachment, for acting as judges in matters in which they themselves were parties (*z*). And

(*u*) 8 Co. 118; *Bonham's case*, Hob. 87; 12 Mod. 687.

(*x*) *Dimes v. Grand Junction Canal Company*, 3 H. of L. Cas. 759—785.

(*y*) The decree affirmed an order of the Vice-Chancellor who was held to be a judge not dependent upon the Lord Chancellor, although subordinate to him, and consequently the disqualification of the Lord Chancellor did not affect the validity of the order. But if the original order had been bad, the judgment of affirmance would have been bad also, although given by a disinterested judge. Thus it has been held, in *R. v. Hammond and another* (9 L. T. 423; 12 W. R. 208), that an order of quarter sessions confirming an order of interested justices should be quashed, together with the original order, although the justices at quarter sessions had no interest in the matter. Interest in deputy recorder, *R. v. Recorder of Cambridge*, 8 El. & Bl. 637; 27 L. J., M. C. 160; interest in sheriff invalidating act of under-sheriff, *R. v. Sheriff of Warwicksh.*, 24 L. T. 211. The objection is not waived by reason of its not having been taken at the hearing, unless the party objecting was then aware of the judge's interest. *Id. Lancaster Railway*

Company v. Heaton, 8 El. & Bl. 952; 27 L. J., Q. B. 195; *R. v. Recorder of Cambridge*, 27 L. J., M. C. 160; *R. v. Aberdare Canal Company*, 14 Q. B. 854; *R. v. Cheltenham Commissioners*, 1 Q. B. 467; *R. v. JJ. Surrey*, 21 L. J., M. C. 195; *R. v. JJ. Monmouth*, 8 B. & C. 137; *R. v. Yarpole*, 4 T. R. 71; 16 Geo. 2, c. 18, s. 3; *R. v. Gudridge*, 5 B. & C. 459; *R. v. Great Yarmouth*, 6 Id. 646; *R. v. London and North Western Railway Company*, 9 L. T. 423; *Great Charter v. Kennington*, 2 Str. 1173; 12 Mod. 674, 687; Salk. 398; Hob. 87; Burr. Sett. Cas. 194, and *Foxham Tything*, 2 Salk. 606. It should be noticed that in the case of *The Mayor of Norwich*, 2 Roll. Ab. 93, in which a judgment in the Mayor's Court was affirmed upon a writ of error, though the mayor himself was the plaintiff, the objection did not appear upon the record; and that this was the true reason of the judgment, and the only one upon which it can be supported, is sufficiently proved by *Holt*, C. J., 12 Mod. 688, and by the opinion of the other judges in the same case; *Ib.* 673, 675.

(*z*) *The Mayor of Hereford's case*, per *Holt*, C. J., 2 Ld. Raym. 766; 1 Salk. 201, 396; and see 2 Rol. Abr. 93, tit. "Judges," pl. 11.

where a criminal information was moved for against a justice of the peace, who, upon a complaint preferred before him in his magisterial capacity by his own bailiff, convicted and sentenced to punishment a labourer employed on his own farm, for refusing to perform his work according to his contract, the Court of Queen's Bench granted a rule to show cause, and only declined making it absolute from a consideration that, under all the circumstances, the steps taken appeared to proceed from an error in judgment, rather than a bad motive; but at the same time they severely reprehended the conduct of the magistrate, in sitting in judgment upon a charge in which he himself was to be considered as the real complainant, though in form the complaint was preferred by his bailiff; and declared that it was a most abusive interpretation of the law, that a man should presume to erect himself into a criminal judge over the servants on his own farm for an offence against himself. The Court also ordered him to pay all the costs of the application (a).

Not only should persons interested in a decision take no part in it, but they should also avoid giving any ground for the belief that they influence others in arriving at a decision. Upon the trial of a parish appeal, one of the justices who was a rated inhabitant of the appellant parish, was on the bench during the hearing, and in the course of the proceedings referred the chairman of the quarter sessions to some of the documents put in evidence. Upon an observation being made that he was interested, he stated that he should take no part in the decision, but he remained on the bench in Court until the judgment, which

(a) *R. v. Hoseason*, 14 East, 606. There seems to be no doubt but that such conduct in a magistrate exposes him to proceedings by information, although no malicious or corrupt motive may be expressly ascribed to him. Instances of applications of the kind mentioned in

the case last cited have since occurred, and on all occasions the Court of Queen's Bench has expressed its strong disapprobation of justices sitting in judgment upon matters in which they are either directly or indirectly interested.

was in favour of the appellants, was given. It was sworn that he did not vote or give any opinion upon the question, nor influence the decision of the other justices, but the order of sessions was held to be invalid by reason of his presence and interference (b).

The Court will not enter into a discussion as to the extent of influence exercised by the interested party, and it is no answer to the objection, that there was a majority in favour of the judgment without reckoning his vote, nor that he withdrew before the decision, if he appear to have joined in discussing the matter with the other magistrates (c).

Though any pecuniary interest, however small, in the subject-matter disqualifies a justice from acting in a judicial inquiry, the mere possibility of bias in favour of one of the parties does not *ipso facto* avoid the justice's decision; in order to have that effect the bias must be shown at least to be real. If a justice has such an interest as might give him a real bias in the matter, he should not only take no part in the decision, which would render

(b) *R. v. JJ. Suffolk*, 18 Q.B. 416; 21 L. J., M. C. 169; and see *R. v. JJ. Hereford*, 2 D. & L. 500. In the former case Lord Campbell, C. J., said, "If he had done his duty, he would have at once voluntarily withdrawn from the court. That is the example set by judges in Westminster Hall. Lord Holt, upon the hearing of a question in which he was personally interested, left the bench and sat by the side of his counsel (see *Bridgman v. Holt*, Show. Parl. Cas. 111); and I did so in the judicial committee of the Privy Council, when I was chancellor of the Duchy of Lancaster." On the hearing of an appeal from a conviction and sentence of imprisonment at petty sessions, one of the magistrates who had adjudicated in the court below, took his seat on the bench and remained there until the appeal was decided, and was consulted as to the number of

magistrates who took part in the decision appealed from, and their unanimity, but he did not otherwise take part in the hearing of the appeal. It was held sufficient to invalidate the proceedings, and to entitle the prisoner to be discharged on *habeas corpus*, *Ex parte Clark*, 26 L. R. Ir. 1. A magistrate who is himself an appellant in a matter similar to other matters before the court, is disqualified from sitting on the bench, *R. v. JJ. Yarmouth*, 8 Q. B. D. 525; 51 L. J., M. C. 39. Where a justice of the peace is shown to have taken an active part in defending an appeal against a decision of which he approves, but to which he was no party, he is disqualified on the ground of probability of bias from taking part in deciding the appeal. *R. v. Cumberland*, 58 L. T. 491.

(c) *R. v. JJ. Hertford*, 6 Q. B. 753.

it void, but should entirely withdraw during the whole case (*d*).

There is much difficulty in drawing the line between an interest that legally disqualifies and one that does not. The mere fact that the justice is a member of the corporation which prosecutes is not sufficient. It is not enough to show that an adjudicating justice is a member of the town council, and as such, has a pecuniary interest in the result of the complaint or information, or that he is a member of the corporation which is charged with the duty of prosecuting the offence which he sits to adjudicate upon, but that in order to disqualify the justice it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter (*e*).

A pecuniary or other substantial interest in a case will

(*d*) See *R. v. Myers*, L. R., 1 Q. B. D. 173; 34 L. T. 247; *R. v. Rand*, L. R., 1 Q. B. 230; 35 L. J., M. C. 157. In *R. v. Alcock*, 37 L. T. 829, the defendant, a commoner of Epping Forest, was summoned by the Corporation of London, as owners of the forest, for destroying their notice boards. The corporation had also commenced an action against him, and obtained an injunction. It was held that a justice was not disqualified by interest from adjudicating on the summons because he had made an affidavit on behalf of the corporation in the said action, in which he stated that he was a commoner, and that the corporation had, by their proceedings, rendered the forest better fitted for the use of the commoners and the public.

(*e*) *R. v. Handsley*, 8 Q. B. D. 383; 51 L. J., M. C. 137; *R. v. Rand*, *supra*; *R. v. JJ. Huntingdon*, 4 Q. B. D. 522. A justice of the peace for a borough, who is a member of the town council having a pecuniary interest in the result of an information

merely in the sense that the fine inflicted would go to the borough fund, or that the corporation of which he is a member are the prosecutors, does not disqualify him from sitting; *R. v. Handsley*, *supra*. If justices as members of a town council are parties to a resolution to prosecute, they cannot adjudicate on the case; they would thereby become prosecutors and judges. *R. v. JJ. Weymouth*, 4 Q. B. D. 332; 48 L. J., M. C. 139; 40 L. T. 748. But where as members of a town council justices had taken an active part in making an order under the Dogs Act, and afterwards sat to hear complaints for non-observance of the order; it was held that there was nothing to prevent their giving an impartial decision. *R. v. JJ. Huntingdon*, *supra*. So also where they had taken part in making the byelaws under which the prosecution was instituted. *R. v. Lee*, 9 Q. B. D. 394; *R. v. Pettimangin*, 33 L. J., M. C. 99; 4 B. & S. 921. A justice who was a ratepayer of the parish and who moved a resolution at a vestry

disqualify a magistrate taking part in a decision, but the fact that the magistrate has been subpoenaed or has advised or attempted to bring about a settlement will not disqualify (*f*).

Waiver of
irregularity.

If, however, a party in a criminal proceeding, knowing of the interest, consent to the interested magistrate acting, he cannot afterwards raise any objection upon this ground (*g*); and in some few cases, from necessity, an interested party is allowed to adjudicate, it being considered a less evil that he should do so than that there should be a failure of justice altogether (*h*). Thus if a magistrate should be assaulted or abused to his face, (while engaged in the execution of his duty,) and no other magistrate be present, it seems that he may commit the offender until he find sureties for keeping the peace or for good behaviour, as the case may require (*i*). Objections should be distinctly taken at first; for a person cannot waive the objection and renew it when the decision is against him (*k*). It is better, therefore, that any objection to the justices' jurisdiction should be raised before the evidence is taken (*l*).

A party who has no knowledge of the interest at the

meeting calling upon B. to remove a heap from the side of the highway, was held to be disqualified from adjudicating on a summons against B., on the ground (1) of bias and (2) of pecuniary interest as a ratepayer in the heap being removed and sold. *R. v. Gaisford*, [1892] 1 Q. B. 381. See *R. v. Milledge*, 4 Q. B. D. 332. A justice who is a shareholder in a railway company should not take any judicial part in enforcing its byelaws. *R. v. Hammond*, 9 L. T. 423; 12 W. R. 208.

(*f*) *R. v. Farrant*, 20 Q. B. D. 58; 57 L. J., M. C. 17; *R. v. JJ. Surrey*, 21 L. J., M. C. 195; *R. v. Tooke*, 32 W. R. 753.

(*g*) *R. v. Cheltenham Commissioners*, 1 Q. B. 467; 10 L. J., M. C. 99. See *R. v. Rishton, Id.*

479; *R. v. Allen*, 33 L. J., M. C. 98.

(*h*) Under such circumstances, "it becomes the unfortunate duty of the court to act as both party and judge," per Lord Denman, C. J. *Carus Wilson's case*, 7 Q. B. 1015; *Dimes' case*, 12 Beav. 63; 14 Q. B. 554; *Great Charte v. Kennington*, 2 Str. 1173.

(*i*) *Dalton*, c. 173; *R. v. Revel*, 1 Str. 420, 421. The better plan is that adopted by metropolitan police magistrates, and proceed by summons before another magistrate.

(*k*) *Turner v. Postmaster-General*, 34 L. J., M. C. 10; 11 L. T. 369.

(*l*) *Wakefield L. B. v. West Riding & Grimsby Railway*, L. R. 1 Q. B. 84; 35 L. J., M. C. 69.

time of the inquiry, does not waive the objection on that ground by appearing and taking part in the proceedings (*m*).

By a provision in the Railway Clauses Act, a justice of the peace who has summary jurisdiction given to him in certain matters under that act, is not to be interested in such matter: it has been held that the insertion of the clause to disqualify an interested justice from acting was intended to have no greater effect than would have been supplied by the common law without it; and therefore it was competent for the parties at the hearing of an information before an interested justice to waive the objection, and to render an order made by such justice valid and binding upon them (*n*).

Sometimes a magistrate is expressly empowered by statute to adjudicate, although to a certain extent interested in the result of the decision. Thus, a justice may act in parochial matters (except appeals), though rated within the parish (*o*), and even in appeals against a poor rate, although rated or liable to be rated in some other parish in the Union than that for which the rate appealed against is made (*p*), and also in matters in which the board of guardians, of which he is an ex-officio member, is interested (*q*). So by the Public Health Act, 1875 (*r*), no justice is to be deemed incapable of acting thereunder by reason of his being a member of any local authority, or being a ratepayer or one of any class of persons liable in

Statutory relief from disqualification by interest.

(*m*) *R. v. Sheriff of Warwickshire*, 24 L. J. 211; 3 W. R. 164.

(*n*) *Wakefield L. B. v. West Riding Railway Company*, L. R., 1 Q. B. 84; 35 L. J., M. C. 69; 13 L. T. 590.

(*o*) 16 Geo. 2, c. 18, s. 1.

(*p*) 27 & 28 Vict. c. 39, s. 6.

(*q*) 5 & 6 Vict. c. 57, s. 15.

(*r*) 38 & 39 Vict. c. 55, s. 258; There is a like enactment in the Public Health (London) Act, 1891, 54 & 55 Vict. c. 76, s. 122. "The

objection, that the magistrate was pecuniarily interested as being a ratepayer in the parish, is a highly technical one; but we must deal with it. Under the Public Health Acts magistrates and others are in many cases relieved of this objection; but where there is no statutory relief, the objection remains," per Mathew, J., in *R. v. Gaisford*, [1892] 1 Q. B. 318; 60 L. J., M. C. 50.

common with the others to contribute to or be benefited by any rate or fund out of which any expenses incurred by such authority are under the act to be defrayed. By the Gas Clauses Act, 1871 (*s*), it is enacted that no justice shall be disqualified from acting in its execution by reason of his being liable to the payment of any gas rent or other charge thereunder.

By the Justices of the Peace Act, 1867 (*t*), a justice shall not be incapable of acting at any petty or special or general or quarter sessions on the trial of an offence arising under an act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of his being as one of several ratepayers or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

A justice of the peace is not disabled from acting in the execution of the Municipal Corporations Act, 1882, by reason of his being liable to the borough rate (*u*).

By the Salmon Fishery Act, 1865 (*x*), no justice of the peace shall be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861, 1865, or either of them, by reason of his being a conservator or member of a board of conservators, or subscriber to any society for the protection of salmon or trout, provided that no justice shall be entitled to hear any case in respect of an offence committed on his own land (*y*).

(*s*) 34 & 35 Vict. c. 41, s. 46.

(*t*) 30 & 31 Vict. c. 115, s. 2.

(*u*) 45 & 46 Vict. c. 50, s. 158.

(*x*) 28 & 29 Vict. c. 121, s. 61.

(*y*) See *R. v. Allen*, 33 L. J., M. C. 98. A justice who is present meeting of a conservancy board

when a resolution is passed to take proceedings for the violation of provisions of the Salmon Fishery Acts, is disqualified from adjudicating on proceedings so authorized. *R. v. Henley*, [1892] 1 Q. B. 504; 61 L. J. M. C. 135; *R. v. Lee*, 9 Q. B. D. 394.

On the other hand, the legislature has in some cases expressly guarded against the danger of entrusting a summary power to persons interested; and it is observable, that the first statute, which clearly and unequivocally gives the summary authority to justices to convict upon examination without trial, viz., the 43 Eliz. c. 7, against robbing of orchards, &c., specially provided (sect. 3) "that no justice or other head officer do execute this statute, for any of the offences there mentioned done to himself, unless he be associated with, and assisted by, one or more other justices of the peace whom the offence doth not concern." A similar exception is introduced into the act 11 Geo. 2, c. 19, s. 4, for preventing frauds by tenants (z). Upon this principle, *brewers* are prohibited from acting in the laws relating to beer (a). The same prohibition is applied to *bakers* and *millers* by 6 & 7 Will. 4, c. 37, s. 15, as to the acts relating to bread. A like provision is inserted in the acts relating to penalties in the cotton (b) trade, the Inclosure Acts (c), the Truck Act (d), the Companies Clauses, Lands Clauses, and Railway Clauses Consolidation Acts (e), the Factory Act (f), the Trade Union Act, 1871 (g), and the Coal Mines Regulation Act, 1887 (h).

(z) There is no such express provision upon this subject in 1 & 2 Vict. c. 74, for recovering possession of small tenements.

(a) 35 & 36 Vict. c. 94, s. 60; 9 Geo. 4, c. 61, s. 6; 5 & 6 Vict. c. 44.

(b) 6 & 7 Vict. c. 40, s. 25.

(c) 41 Geo. 3, c. 109, s. 89; 3 & 4 Will. 4, c. 35, s. 1; 8 & 9 Vict. c. 118, s. 159.

(d) 1 & 2 Will. 4, c. 37, s. 21. The Truck Amendment Act 1887 (50 & 51 Vict. c. 46, s. 15) enacts that a person engaged in the same trade or occupation as an employer charged with an offence against the principal Act (1 & 2 Will. 4, c. 37) or this Act shall not act as a justice of the peace in hearing and determining such charge.

(e) 8 Vict. c. 16, s. 3; 8 Vict. c.

18, ss. 3, 39; *R. v. The Sheriff of Warwicksh.*, 24 L. T. 211; *Worsley v. South Devon Railway Company*, 16 Q. B. 539; 8 Vict. c. 20, s. 3.

(f) 41 Vict. c. 16, s. 89, whereby a person who is occupier of a factory or workshop to which the act applies, or the *father, son or brother* of such occupier, is disqualified from acting as a member of a court of summary jurisdiction in respect of any offence under that act.

(g) 34 & 35 Vict. c. 31, s. 22, contains a similar provision to 41 Vict. c. 16, s. 89. See previous note.

(h) 50 & 51 Vict. c. 58, s. 62, whereby a person who is owner, agent, or manager of any mine, or a miner or miner's agent, or the father, son, or brother, or father-in-law, son-in-law, or bro

A justice may not act in granting any licence for a house for the reception of lunatics, if he is, or within one year next preceding has been, interested in a licensed house (*i*).

Disqualifica-
tion from
other causes.

A justice of the peace, who happens to be sheriff of the county, cannot act as a justice therein during his shrievalty; if he does, his acts are void (*k*). Where a debtor is adjudged bankrupt, he is disqualified in all parts of the United Kingdom from being appointed or acting as a justice of the peace. Such disqualification is removed and ceases if and when the adjudication of bankruptcy against him is annulled; or he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part (*l*). No such disqualification is to exceed a period of five years from the date of the order of discharge (*m*). Where a person who is a justice of the peace is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election whether he has obtained a certificate of indemnity or not, it is the duty of the director of public prosecutions to report the case to the Lord Chancellor with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being, or having been, mayor of a borough, the Lord Chancellor has the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace (*n*). A coroner is a justice of the peace by virtue of his office (*o*), and a justice of the peace who is elected coroner for a county or

ther-in-law, of such owner, agent, or manager or of a miner or miner's agent, or who is a director of a Company being the owner of a mine, shall not, except with the consent of both parties to the case, act as a court or member of a court of summary jurisdiction in respect

of any offence under the act.

(*i*) 53 Vict. c. 5, s. 208.

(*k*) 50 & 51 Vict. c. 55, s. 17.

(*l*) 46 & 47 Vict. c. 52, s. 32.

(*m*) 53 & 54 Vict. c. 71, s. 9.

(*n*) 46 & 47 Vict. c. 51, s. 38.

(*o*) Dalt. p. 2; Com. Dig. Justices of Peace (A. 4).

division, does not thereby become disqualified from acting as a justice for such county or division (*p*). Solicitors may be justices for a county unless the same be a county in which they practise or carry on their profession as solicitors (*q*).

SECT. 5.—*Priority of Jurisdiction.*

All the justices of each district are equal in authority; but, as it would be contrary to the public interest, as well as indecent, that there should be a contest between different justices, it is agreed, that the jurisdiction in any particular case attaches in the first set of magistrates, duly authorized, who have possession and cognizance of the fact, to the exclusion of the separate jurisdiction of all others. So that the acts of any other, except in conjunction with the first, are not only void, but such a breach of the law as subjects them to indictment (*r*). It is not, however, necessary that the justice hearing the charge should be the same justice before whom the information was laid (*s*). Competition
of authority.

SECT. 6.—*Conditions precedent to exercise of Jurisdiction.*

Under 43 Geo. 3, c. 59, s. 2, which authorizes justices at Quarter Sessions to order county bridges to be widened, it is an essential preliminary to the making of such an

(*p*) *Davis v. JJ. Pembrokeshire*, 7 Q. B. D. 513.

(*q*) 34 Vict. c. 18.

(*r*) *R. v. Sainsbury*, 4 T. R. 456; *R. v. Great Marlow*, 2 East, 244. See *ante*, p. 38.

(*s*) 11 & 12 Vict. c. 43, s. 29; and see *Tarry v. Newman*, 15 M. & W. 645. It was held under the Divorce Act (20 & 21 Vict. c. 85, s. 21), that no magistrate could

discharge an order protecting the property of a married woman deserted by her husband, except the magistrate by whom the order was made (*Ex parte Sharpe*, 33 L. J., M. C. 152); but now in case of his death, removal, or incapacity to act, it may be discharged by the magistrate acting as his successor or in his place; 27 & 28 Vict. c. 44. The justices to hear a complaint

order that there should be a presentment of the insufficiency of the bridge (*t*). No prosecution for the recovery of penalties before justices under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), can be commenced unless the person purchasing any article with the intention of submitting the same to analysis, shall have notified to the seller his intention to have the same analysed by the public analyst; such notification, which is required by the statute, being a condition precedent to a prosecution under the act (*u*). In some cases a certain interval must elapse before a prosecution can be commenced (*x*).

SECT. 7.—*As to the Offence.*

Where property, &c., is in question.

There is seldom any difficulty in ascertaining the offences liable to summary conviction, since each must be the subject of a special law. It may be proper, however, to mention a rule applicable to this mode of trial in general, that where property or title is in question, the jurisdiction of justices of the peace to hear and determine in a summary manner is ousted, and their hands tied from interfering, though the facts be such as they have otherwise authority to take cognizance of (*y*). It will be sufficient at present to notice this maxim cursorily, reserving its application to particular cases, till we have occasion to

against a husband to maintain his wife under 31 & 32 Vict. c. 122, s. 33, may be other than those who summoned him to appear before them, but acting for the same petty sessional division; 39 & 40 Vict. c. 61, s. 19.

(*t*) *Re Newport Bridge*, 29 L. J., M. C. 52.

(*u*) *Barnes v. Chipp*, 3 Ex. D. 176.

(*x*) *Post*, p. 58.

(*y*) *R. v. Burnaby*, 2 Ld. Raym. 900; 1 Salk. 181; *R. v. Speed*, 1 Ld. Raym. 583; *Kinnersley v. Orpe*, Doug. 499; *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 32, S. C.; *R. v. Stimpson*, 4 B. & S. 301; 32 L. J., M. C. 208, 210; *Taylor v. Newman*, 4 B. & S. 89; 32 L. J., M. C. 186, 188; *Hudson v. M'Rae*, 4 B. & S. 585; 33 L. J., M. C. 65. See *post*, "Defence," and Index "Title."

examine the matters of complaint and defence connected with our subject.

It seems that offences, which are cognizable only before magistrates, do not come within the operation of the 18 Eliz. c. 5, ss. 3, 4, which prohibits the compounding of offences; that statute being confined to offences cognizable before the Superior Courts (z). But although not within the prohibition of that statute, the policy of the common law does not allow the compromise of offences which are of a public nature. Thus, where a defendant was charged, under the Toleration Act, with having disturbed a dissenting congregation, which rendered him liable to be tried at the sessions, and on conviction to forfeit 20*l.* to the crown, and he was allowed by the justice to compromise with the prosecutor, this was held to be illegal as stifling a prosecution for a public misdemeanor (a). It has been held that an agreement not to prosecute further a pending indictment for riot and assault upon a constable in the execution of his duty was illegal (b). If, however, the offence involve damages to the injured party, for which he may maintain an action, as in the case of an assault, although the offence is also of a public nature, the *damage* sustained by the individual may legally form the subject of a compromise. But if criminal proceedings have been commenced in respect of such injury, it is doubtful whether he can enter into any compromise upon the subject before conviction (c). Upon principle, such a course appears to be objectionable, inasmuch as it encourages persons to use

Compromise
of offences.

(z) *Rex v. Crisp*, 1 B. & Ald. 232.

(a) *Edgecombe v. Rodd and others*, 5 East, 294. Le Blanc, J., there said (p. 303), "This, it must be remembered, was a prosecution for a public misdemeanor, and not for any private injury to the prosecutor." See also *Keir v. Leeman*, 9 Q. B. 394.

(b) *Keir v. Leeman*, 6 Q. B. 308; S. C. in error, 9 Q. B. 371. See also *Goodall v. Lowndes*, 6 Q. B. 464; *Coppock v. Bower*, 4 M. & W.

361; *R. v. Allen*, 1 Best & S. 850; 31 L. J., M. C. 129; and notes to *Collins v. Blantern*, 1 Smith's L. C. p. 398.

(c) See Kyd on Awards, p. 66, 2nd ed.; *White v. Speltigue*, 13 M. & W. 603. Where an information has been laid, a compromise between the parties will not take away the jurisdiction of the justices to convict. *R. v. JJ. Wiltshire*, 8 L. T. 242; *Ex parte Bryant*, 27 J. P. 277.

the process of criminal justice as a means of oppression and extortion. With reference to this branch of the question C. J. *Tindal*, delivering the judgment of the Court of Exchequer Chamber on the occasion above alluded to, said (*d*), "There is a class of cases, such as *Beeley v. Wingfield* (*e*), and *Baker v. Townsend* (*f*), which do not at all break in upon sound principles. These are cases where the private rights of the injured party are made the subject of agreement, and where, by the previous conviction of the defendant, the rights of the public are also preserved inviolate. As *Gibbs*, C. J., in the latter case, well observes, 'The parties have referred nothing but what they have a right to refer. They have referred the several assaults' (by which we understand him to mean their several rights to damages for those assaults); 'these may be referred. They have referred the right of possession; that may be referred. The reference of all matters in dispute *refers all other their civil rights*,' which words show our previous interpretation to be correct. The case of *Beeley v. Wingfield* was after conviction, and the promissory note seems merely to have been given for the expenses of the prosecution, and was obviously a part of the punishment inflicted by the Court after conviction of the offence. Indeed it is very remarkable what very little authority there is to be found, rather consisting of dicta than decisions, for the principle that any compromise of a misdemeanor, or indeed of any public offence, can be otherwise than illegal, and any promise founded on such a consideration otherwise than void. If the matter were *res integra*, we should have no doubt on this point. We have no doubt that, in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him, notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. It is said, indeed, that in

(*d*) 9 Q. B. p. 394.
 (*e*) 11 East, 46.

(*f*) 7 Taunt. 422.

the case of an assault, he may also undertake not to prosecute on behalf of the public. It may be so, but we are not disposed to extend this any further. In the case before us, the offence is an assault coupled with *riot* and the obstruction of a public officer. No case has said that it is lawful to compromise such an offence. Nor do we think that the assent of the judge was material."

Commissioners of excise are expressly authorized by 7 & 8 Geo. 4, c. 53, s. 98, to compromise offences against the excise (*g*).

SECT. 8.—*Of the Limitation of Authority as to Amount.*

The jurisdiction of magistrates is often limited by the amount of the value of the property in dispute. Thus, under the Employers and Workmen's Act, 1875 (*h*), a dispute between an employer and workman may be heard and determined by a Court of summary jurisdiction, provided that the amount claimed does not exceed 10*l.*; and under the Metropolitan Police Acts, a magistrate may order goods unlawfully detained to be restored to their owner, when the value does not exceed 15*l.* (*i*); and he may, in certain cases, award compensation for damage not exceeding 10*l.* (*k*); and under the Lands Clauses Consolidation Act, when the compensation claimed for land taken or injuriously affected does not exceed 50*l.*, it is to be settled by two justices (*l*). Under the Merchant Shipping Acts (*m*) justices may adjudicate upon salvage claimed, provided that the property salvaged does not exceed 1,000*l.* in value (*n*). Every fine under the Mail-Ships Act, 1891,

(*g*) See *Atlee v. Backhouse*, 3 M. & W. 633. By the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93, s. 48), a penalty is imposed upon a common informer for compounding an information under that act without the consent of a justice.

(*h*) 38 & 39 Vict. c. 90, s. 4.

(*i*) 2 & 3 Vict. c. 71, s. 40.

(*k*) 2 & 3 Vict. c. 47, s. 62.

(*l*) 8 Vict. c. 18, s. 22.

(*m*) Merchant Shipping Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 49.

(*n*) See *The William and John*, 32 L. J., Adm. 102; and *The Andrew Wilson*, *Id.* 104.

exceeding 50*l.* is to be recovered by action in the High Court, and a fine not exceeding 50*l.* may be recovered on summary conviction, provided that every offence for which a fine exceeding 50*l.* can be imposed under the act may be prosecuted on summary conviction, but the fine imposed on such conviction is not to exceed 50*l.* (o).

SECT. 9.—*Of the Limitation of Authority as to Time.*

Having explained the extent of the magistrate's jurisdiction with a view to the place and nature of the offence, it remains to be inquired what limitations it is subject to in point of *time*. This is to be ascertained by the statutes themselves which direct the proceeding in each case; and where no time is specially limited, the complaint is to be made or the information laid within six calendar months from the time when the matter of the complaint or information arose (p). The period is fixed by different statutes, either with reference to the time of commencing the prosecution, or to the time of conviction: and the following rules apply according as these different terms are

(o) 54 & 55 Vict. c. 31, s. 7.

(p) 11 & 12 Vict. c. 43, s. 11. But it need not be alleged in the conviction that the information was laid within the specified time. *Wray v. Toke*, 12 Q. B. 492. This section is retrospective; *R. v. Leeds and Bradford Railway Company*, 18 Q. B. 343; 21 L. J., M. C. 193. Any complaint or information made or laid in pursuance of The Coal Mines Regulation Act, 1887, is (save as otherwise expressly provided), to be made or laid within three months from the time when the matter of the complaint or information arose; 50 & 51 Vict. c. 58, s. 62. In summary proceedings for offences and fines under The Factory and Workshop Acts, an information may be laid within

three months after the date at which the offence comes to the knowledge of a factory inspector, and it shall not be laid after the expiration of six months from the commission of the offence. 54 & 55 Vict. c. 75, s. 29. In all prosecutions under The Sale of Food and Drugs Act, 1875, the summons is to be served within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase for test purposes of the food or drug, for the sale of which the seller is liable to prosecution. 42 & 43 Vict. c. 30, s. 10. These provisions are imperative, and not merely directory. *Dixon v. Wells*, 25 Q. B. D. 249; 59 L. J., M. C. 16.

made use of. Where the proviso, as to the time, runs, "*that the offence be prosecuted,*" or that "*the party be prosecuted for the offence,*" within a stated time, it is sufficient that the information be laid, though the conviction do not take place within that time (*q*): the information being, for that purpose, the commencement of the prosecution. But if a statute authorizes a conviction, "*provided such conviction be made within — months after the offence committed,*" (as the former game acts of the 22 & 23 Car. 2, c. 25; 5 Ann. c. 14, s. 1,) it is not enough that the information was within that period, but the conviction itself is void if not made within the limited time. And it makes no difference, that it was prevented from being so by an adjournment at the request of the defendant himself; for, after the time has expired for making the conviction, there is no authority existing for that purpose (*r*). And where an act provides that all penalties imposed by it may be "*recovered*" within three months of the commission of the offence, it seems that the conviction must occur within the three months (*s*). The words "*order for the payment of money or otherwise,*" in sect. 1 of the Summary Jurisdiction Act, 1848, include orders of every kind which a justice of the peace has authority to make; and, therefore, where a local act for the improvement of a borough provided, that if buildings should be erected "*contrary to any requirement by the*

(*q*) *R. v. Barrett*, 1 Salk. 383.

(*r*) *R. v. Tolley*, 3 East, 467; *R. v. Mainwaring*, El. B. & El. 474; 27 L. J., M. C. 278; per Crompton, J., *Id.* 279.

(*s*) *R. v. Mainwaring*, *supra*. Mr. Justice Coleridge, however, in that case said, "The word '*recovered*' is a complex term, and seems to allude to the many steps which must be taken; and I should be inclined to say, that if the informer or complainant took any one of the steps required, and thereby commenced the proceedings within the time limited, he

would have performed the condition required;" and in the course of the argument Mr. Justice Erle asked, "May not a judgment pronounced after an adjournment by reasonable intendment of law be taken to relate back to the time when the proceeding was commenced?" The word "*recovered*," used with reference to actions at law in general, involves recovery by judgment; see *Beard v. Perry*, 2 B. & S. 493; 31 L. J., Q. B. 180; *James v. Vane*, 29 *Id.* 169; *Hewitt v. Cory*, L. R., 5 Q. B. 418.

corporation," the corporation might "make complaint thereof before a justice," who was empowered to make an order directing the demolition of the building, it was held, that the complaint upon which an order for demolition was to be founded must be made within six months after the completion of a building erected contrary to the provisions of the local act (*t*). The words "such complaints" in sect. 11 of the Summary Jurisdiction Act, 1848, refer to complaints mentioned in sect. 8 of the act, viz. complaints "upon which a justice may make an order for the payment of money or otherwise;" and, therefore, proceedings by justices for enforcing a rate by the mere issuing of a warrant of distress are not within the statute, and need not be taken within six months (*u*). The provisions of s. 11 of the act of 1848 do not extend to the recovery of poor-rates (*x*). Proceedings in bastardy are not within the statute 11 & 12 Vict. c. 43, but the application for a summons against the putative father must be made within twelve months from the birth of the child, or at such other times as are mentioned in sect. 3 of the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65). An application for a bastardy summons having been made within the twelve months, but the summons, which was thereupon granted, not having been served upon the defendant by reason of his absence, an application after the lapse of twelve months from the birth of the child was made for another summons to another justice (the justice who had granted the first summons being dead), it was held to be too late, as the second summons could not be treated as having issued on the first application (*y*).

(*t*) *Morant v. Taylor*, 1 Ex. D. 188; 45 L. J., M. C. 78; 34 L. T. 139; 24 W. R. 461.

(*u*) *Sweetman v. Guest*, L. R., 3 Q. B. 262; 37 L. J., M. C. 59; 18 L. T. 52. See also *Mayer v. Harding*, 17 L. T. 140.

(*x*) *R. v. Price*, 5 Q. B. D. 300; 49 L. J., M. C. 49; Summary

Jurisdiction Act, 1884, s. 10, *post*, Appendix.

(*y*) *R. v. Pickford*, 30 L. J., M. C. 133; *contra* if the issuing of the summons was suspended until the second application. See *Potts v. Cumbridge*, 8 El. & Bl. 847; 27 L. J., M. C. 62; and *R. v. Machen*, 18 L. J., M. C. 213. See *post*, p. 69.

In all summary proceedings by a local authority under the Public Health Act, 1875 (38 & 39 Vict. c. 55), for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken is to be reckoned from the date of the service of notice of demand (z).

The Merchant Shipping Act, 1854, sect. 257, makes it an offence to persuade or attempt to persuade any seaman to neglect or refuse to join, or to desert from, his ship. By sect. 525, no conviction for any offence shall be made under that act in any summary proceeding unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same. It has been held that "parties to the proceedings" mean the seamen and the persons persuading or attempting to persuade; and that if either of them leaves the kingdom during the six months after the commission of the offence, an information may be laid within two months of his return (a).

With regard to the mode of reckoning the time limited by penal statutes, these points have been determined (b):—

1st. If the time be expressed by *the year*, or an aliquot "Year." part, as a half, a quarter, &c. of a year, the computation is by calendar months, of twelve to the year; but formerly if *months* were mentioned, and not the *year*, they "Month." were computed by lunar months, of four weeks to the month (c). Now, however, by 52 & 53 Vict. c. 63, s. 3,

(z) See sect. 257; *Grece v. Hunt*, 46 L. J., M. C. 202.

(a) *Austin v. Olsen*, L. R., 3 Q. B. 208; 37 L. J., M. C. 34.

(b) See post, Chap. III., Sect. 2, as to the mode of reckoning time for appealing from convictions.

(c) *R. v. Peckham*, Carth. 406;

R. v. Bellamy, 1 B. & C. 500; 2 D. & R. 727; 1 Dowl. & Ry. Mag. Ca. 376. One apparent contradiction to this rule was found in the construction of the act of 13 Hen. 4, c. 7, for the punishment of riots, which requires the justices to inquire, hear, and determine within

the word "month" in all Acts of Parliament passed after 1850 is to mean *calendar* month, unless the contrary intention appears (*d*).

"Time."

Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to, unless otherwise specifically stated, is to be held to be in case of Great Britain and Ireland, Greenwich mean time (*e*).

"From committing," or "from the day of committing the offence."

2nd. Whether the time is dated from the offence committed or from the day of doing the act in question, the day on which it was committed is to be excluded (*f*). In the computation of the month's notice of action to a justice required by statute, the day of giving the notice and the day of suing out the writ are both excluded (*g*), so that the defendant may have the full statutory time given to him.

"Clear."

The same mode of computation has always been adopted, where the statute uses the words "clear days" or so many

a month after the riot committed. Upon this statute it was determined, that an indictment may be within a calendar month; for, it was said, that statute is not a penal statute, but only directory of the punishment of an offence which was so at common law, and therefore that the common law calculation, viz. by calendar months, must prevail. *R. v. Cussens*, 1 Sid. 181. See *Lang v. Gale*, 1 M. & S. 111, as to the construction of the word "month," when used in a contract; also *Simpson v. Margitson*, 11 Q. B. 23, 31. When provisions as to time are directory only, see *ante*, p. 40, n. (*d*).

(*d*) A person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect. *Migotti v. Colvill*, 4 C. P. D. 233; 48 L. J., M. C. 695; 40

L. T. 747.

(*e*) 43 & 44 Vict. c. 9.

(*f*) *Young v. Higgon*, 6 M. & W. 49, 52; *Williams v. Burgess*, 12 A. & E. 635; *Hardy v. Kyle*, 9 B. & C. 603. The Act for the Prevention of Cruelty to Animals (12 & 13 Vict. c. 92), enacts that every complaint under its provisions is to be made "within one calendar month after the cause of such complaint shall arise." On June 30, an information was laid in respect of an act of cruelty alleged to have been committed on May 30. It was held that the day on which the alleged offence was committed was to be excluded from the computation of the calendar month within which the complaint was to be made; that the complaint was therefore made in time, and the justices had jurisdiction to hear the case. *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 65 L. T. 677.

(*g*) *Young v. Higgon*, *supra*. See 11 & 12 Vict. c. 44, s. 8.

“days at least” (*h*). “Ten days at least” means ten “At least.” clear days intervening.

3rd. If a penalty is to be paid “within” a certain “Within.” number of days, the time is to be reckoned excluding the first day and including the last (*i*).

4th. The words “immediate” and “forthwith” occurring in a statute are not construed in their strictest sense “on the instant,” but mean with reasonable promptness, having regard to all the circumstances of the particular case (*k*). “Immediately” means same thing as “forthwith” and implies prompt action and as speedy as the circumstances reasonably admit of (*l*).

5th. Where a statute prescribes a given number of days Sunday for doing an act, and does not expressly exclude Sunday, the days mentioned are to be reckoned consecutively, including Sunday (*m*); and therefore when a notice of appeal was to be served “within six days,” it was held too late to serve it on the seventh day, although the sixth day fell on a Sunday (*n*).

(*h*) *Mitchell v. Forster*, 12 A. & E. 472; *R. v. JJ. Shropsh.*, 8 Id. 173; *Re Prangley*, 4 Id. 781; *Zouch v. Empsey*, 4 B. & Ald. 522; *R. v. JJ. Herefordsh.*, 3 Id. 581; *Freeman v. Read*, 32 L. J., M. C. 226; 4 B. & S. 174.

(*i*) *Newman v. The Earl of Hardwicke*, 3 N. & P. 368, where the Court also decided that if the warrant is not issued too soon, it is immaterial that it bears too early a date. See also on the word “within,” *Williams v. Burgess*, 12 A. & E. 635; *R. v. JJ. Middlesex*, 2 Dowl., N. S. 719; as to the word “after,” see *R. v. Higham*, 9 Dowl. 203.

(*k*) *R. v. Ashton*, 1 L., M. & P. 491; 19 L. J., M. C. 236, 239; *Kenney v. Hutchinson*, 6 M. & W. 134; *Page v. Pearce*, 9 Dowl. 815; *R. v. JJ. Worcester*, 7 Id. 789; *R. v. Robinson*, 12 A. & E. 672; *Ex parte Lowe*, 15 L. J., M. C. 99; *Sandford v. Alcock*, 2 Dowl., N. S. 463; *Drake v. Gough*, 1 Id. 573;

Tennant v. Bell, 9 Q. B. 684; *Staunton v. Wood*, 16 Id. 638; *Doe v. Sutton*, 9 C. & P. 706; *R. v. JJ. Ely*, 5 Ell. & B. 489; 25 L. J., M. C. 1, 3; *R. v. JJ. Gloucestersh.*, 16 L. J., M. C. 57. Certificate under 3 & 4 Vict. c. 24, *Thompson v. Gibson*, 8 M. & W. 281; *Pryme v. Brown*, 1 Dowl., N. S. 680; *Nelmes v. Hedges*, 2 Id. 350. Certificate under the County Court Acts, *Chaplin v. Levy*, 9 Exch. 673. See where “immediately” means “on the spot,” *Arnold v. Dimsdale*, 2 El. & Bl. 580. Where a contract is to be performed “directly,” it does not mean “within a reasonable time,” but “speedily” or “as soon as possible;” *Duncan v. Topham*, 8 C. B. 225.

(*l*) *R. v. JJ. Berkshire*, 48 L. J., M. C. 137.

(*m*) Per Hill, J., in *Ex parte Simkin*, 29 L. J., M. C. 25.

(*n*) *R. v. JJ. Middlesex*, 2 Dowl., N. S. 719; *Rawlins v. Overseers of West Derby*, 2 C. B. 72; see *Anon.*,

“Judgment.” 6th. Under an act, which allowed the party “aggrieved by the *judgment*” of a justice to appeal to the next quarter sessions, it was contended that the party was not aggrieved by the judgment until execution, but the Court held that he must appeal to the sessions next after the conviction, and not to those after the execution upon it (o). In that case, *Buller, J.*, said:—“The grievance to the party is the *judgment*, and not the execution. If a contrary construction were to be put upon this statute, it would be such a snare to the magistrates, that they would never be safe, for the justices do not issue their warrants of execution till they know whether an appeal will be brought or not; and they could never know when the party found himself aggrieved, if he were not to appeal at the quarter sessions next after the conviction.” But where a statute required the notice of appeal to be given within six days after the “cause of complaint” arose, it was held to mean six days after the actual levy under the warrant of distress, and not merely after the date of the warrant (p), Lord *Ellenborough* saying:—“The party appealing was within six days after he was actually damnified. It is not necessary he should appeal on the warrant, for *non liquet* that it will be proceeded upon.” A statute required that an action for anything done in pursuance of it should be brought within three months after “*the fact committed*.” An action of trespass for taking, distraining and selling the plaintiff’s goods under a warrant of distress for arrears of a church-rate in pursuance of the act, was held rightly brought within three months after the *sale* (q). The Court distinguished this case, in which the seizure of the goods was made with a view to their detention until the

“Cause of complaint.”

“Fact committed.”

18 Jur. 1104; *Rowberry v. Morgan*, 9 Exch. 730; *Peacock v. The Queen*, 4 C. B., N. S. 264; 27 L. J., C. P. 224. See Woolrych on Legal Time, p. 92. As to fractions of a day in law, *Hardy v. Ryle*, 9 B. & C. 606; *Edwards v. The Queen*, 9 Exch. 628; *R. v. JJ. Middlesex*, 5 D. & L.

580; *R. v. Warwick*, 22 L. J., M. C. 109.

(o) *Prosser v. Hyde*, 1 T. R. 414, 417.

(p) *R. v. JJ. Devon*, 1 M. & S. 411.

(q) *Collins v. Rose*, 5 M. & W. 194; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121, 127.

amount should be paid, and their subsequent sale if it should not, from those cases in which the seizure is for a forfeiture and intended to deprive the party of his property immediately. In the latter class of cases the time runs from the seizure (*r*).

The statute 24 Geo. 2, c. 44, s. 8, required that any action against a justice for anything done in the execution of his office should be commenced within six calendar months after the "*act committed*" (*s*). An action for false imprisonment was held to have been commenced in time, the plaintiff having been discharged from prison on the 14th of December, and the writ having been issued on the 14th of June (*t*). "Act committed."

The meaning of the words in 11 & 12 Vict. c. 43, s. 11, limiting the period of prosecution to six months from the time "when the matter of the complaint, &c., arose," is that proceedings shall be taken within six months from the time when the liability or default of the defendant was complete, and the remedy given by the statute was capable of being enforced against him. Thus, under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 120), expenses incurred by the commissioners in respect of dangerous structures are payable by the owner. Payment of expenses so incurred having been demanded of the owner and refused, complaint was made before a magistrate within six months from the refusal to pay, but after six months from the completion of the work which caused the expenditure. It was held that "the matter of complaint" was nonpayment of the expenses, and therefore the time Matter of the complaint.

(*r*) See the authorities cited in *Collins v. Rose*. And if goods are found, subjecting the party having them in his possession to the forfeiture of them for receiving them illegally, the day on which they are found will be presumed to be the day whereon the forfeiture was incurred; *R. v. Bass*, 5 T. R. 251.

(*s*) The words in sect. 8 of 11 & 12 Vict. c. 44, are "after the act complained of had been committed."

(*t*) *Hardy v. Ryle*, 9 B. & C. 608; *Young v. Higgon*, 6 M. & W. 53. When the cause of action is a continuing one, by imprisonment, it is sufficient to show that the action was commenced within six months of the end of the imprisonment. *Massey v. Johnson*, 12 East, 67; *Pickersgill v. Palmer*, B. N. P. 24; *Collins v. Rose*, *supra*; see *Whitehouse v. Fellowes*, 10 C. B., N. S. 765.

ran from the demand and refusal of payment, not from the completion of the work (*u*). An information for deserting a wife, whereby she became chargeable to the parish, was held to be in time if laid within six calendar months from the time of chargeability (*x*).

SECT. 10.—*Of the Delegation of Authority.*

It has been much questioned whether the Crown, since the stat. 27 Hen. 8, c. 24, s. 2 can delegate to a subject the power of appointing a justice of the peace (*y*). Where by charter the aldermen of a borough had power and authority to execute by themselves, or, in their absence, by their deputies, the office of aldermen, and the charter then directed that the aldermen for the time being should be justices of the peace within the borough: it was held that this charter did not enable the aldermen to delegate their office of justice, and therefore that a deputy alderman was not a justice for the borough (*z*). And it may be laid down as a general rule that a ministerial officer may, but a judicial officer cannot, without express authority appoint a deputy (*a*).

(*u*) *Labalmondiere v. Addison*, 1 El. & El. 41; 28 L. J., M. C. 25; and see *R. v. Middleton*, 1 El. & El. 98; 28 L. J., M. C. 41.

(*x*) *Reeves v. Yeates*, 1 H. & C. 435; 31 L. J., M. C. 241; *diss.* Bramwell, B. By 39 & 40 Vict. c. 61, s. 19, proceedings against any person who runs away and leaves his wife or his or her child chargeable to any union, may be taken within two years after the commission of the offence.

(*y*) *Jones v. Williams*, 3 B. & C. 762; 5 Dowl. & Ry. 654; *Arnold v. Gausson*, 8 Exch. 463, 475; *Arnold v. Dimsdale*, 2 El. & Bl. 580.

(*z*) *Jones v. Williams*, *supra*.

(*a*) *Walsh v. Southworth and*

others, 6 Exch. 150, 156; per Parke, B., 1 Roll. Ab. 591, tit. "Deputie;" see also Com. Dig. "Officer" D. 2; 4 Inst. 126, 128; *Claridge v. Evelyn*, 5 B. & Ald. 87, per Holroyd, J.; *Jones v. Williams*, 2 Dowl., N. S. 988. Recorder appointing deputy, 45 & 46 Vict. c. 50, s. 166; 51 & 52 Vict. c. 23; stipendiary magistrate, 51 & 52 Vict. c. 23; County Court Judge, 51 & 52 Vict. c. 43, ss. 18—21. Where a judge is interested, neither he nor *his deputy* can determine the cause or sit in Court; *Brooks v. The Earl of Rivers*, Hardr. 503; and see *Worsley v. The South Railway Company*, 16 Q. B. 539; *ante*, p. 40.

CHAPTER II.

THE PROCEEDINGS BEFORE THE JUSTICES PRELIMINARY
TO CONVICTION OR DISMISSAL, AND PROCEDURE
ON DISMISSAL.

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|--|---|
| 1. <i>On the General Effect of the Summary Jurisdiction Acts, 1848 and 1879</i> . . . 67 | 6. <i>Witnesses</i> . . . 119 |
| 2. <i>Information</i> . . . 72 | 7. <i>Examination</i> . . . 124 |
| <i>Declining Jurisdiction</i> . . . 87 | 8. <i>Proofs necessary</i> . . . 129 |
| 3. <i>Issuing Summons</i> . . . 91 | 9. <i>The Defence</i> . . . 145 |
| 4. <i>Apprehension, Appearance or Default of Defendant</i> . . . 101 | 10. <i>Evidence in reply</i> . . . 164 |
| 5. <i>Proceedings after Appearance</i> . . . 109 | 11. <i>Hearing of Second Infor- mation before decision of First</i> . . . 164 |
| | 12. <i>Dismissal</i> . . . 165 |

SECT. 1.—*On the General Effect of the Summary
Jurisdiction Acts, 1848 and 1879.*

IN the present chapter, we shall take a view of the proceedings before justices preliminary to judgment and conviction, but before doing so, we propose to consider generally the applicability and effect of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which materially influence such proceedings at every stage.

The procedure in Courts of Summary Jurisdiction is regulated by the 11 & 12 Vict. c. 43 (The Summary Jurisdiction Act, 1848), and 42 & 43 Vict. c. 49 (The Summary Jurisdiction Act, 1879), and 47 & 48 Vict. c. 43 (The Summary Jurisdiction Act, 1884) (a).

The Summary Jurisdiction Act, 1848, forms one of a series known as Jervis's Acts (b), from their having been introduced into Parliament by Sir John Jervis, formerly

(a) The whole of these statutes
will be found in the Appendix.

(b) 11 & 12 Vict. cc. 42, 43, 44.

Chief Justice of the Court of Common Pleas, who then filled the office of Attorney-General; it is entitled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and recited that it would conduce to the improvement of the administration of justice if the several statutes thereon were consolidated, with such additions and alterations as might be deemed necessary, and that such duties should be clearly defined by positive enactment. In accordance with these objects, its provisions simplify and render uniform the procedure before justices relating to summary convictions and orders, prevent technical objections from being taken to them, and determine with certainty many questions of doubt and difficulty which existed at the time of the passing of the statute.

The sections are, in some instances, general in their terms, referring to "all cases where an information shall be laid" (c); but, as we have seen, these words still seem to render in other respects the proceedings liable to the express requirements of the statutes on which they are founded (d): other sections in terms leave the proceedings subject to such special statutes, *e. g.*, informations may be laid without oath "unless some particular act of parliament shall otherwise require" (e); while to others a retrospective and controlling effect is expressly given.

The important changes in the law made by the Summary Jurisdiction Act, 1879, are stated at the end of the Introduction to this work (f). The Summary Jurisdiction Act, 1884 (g), is principally a repealing and explanatory Act. The Forms to be used in proceedings under the Summary Jurisdiction Acts are contained in the schedule to Summary Jurisdiction Rules, 1886 (h).

(c) Sect. 1, &c.

(d) *Ante*, p. 38, n. (u).

(e) Sect. 10; and see sects. 11, 12, 19, 21.

(f) *Ante*, p. 14. The Act is printed in the Appendix.

(g) *Post*, Appendix.

(h) *Post*, Appendix.

Provision is made by the Summary Jurisdiction (Process) Act, 1881, for service of the process of an English Court of summary jurisdiction in Scotland, and for a Scotch Court in England, and for dealing with persons apprehended under any process executed in pursuance of the Act; and as to executing distress warrants (*i*).

The Summary Jurisdiction Acts extend to England and Wales and the town of Berwick-upon-Tweed, but not to Scotland or Ireland, or to the Isle of Man, Jersey, Guernsey, Alderney or Sark, except the several provisions respecting the indorsement of warrants (*k*).

Places and statutes exempt from the act.
Operation of act.

The Summary Jurisdiction Acts also do not extend to—

1. Warrants and orders for the *removal* of poor persons chargeable to any parish, township or place (*l*).

Matters exempt from the act.

2. Complaints and orders made with respect to *lunatics*, or the expenses incurred for the lodging, maintenance, medicine, clothing or care of any lunatic or insane person.

Removal of the poor.
Lunatics.

3. Complaints, orders and warrants in matters of *bastardy* made against the putative father, except such of the provisions as relate to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for nonpayment of the same. Also except as to arrears, proof of service of summonses, and other documents and appeal (*m*). Until the passing of the Summary Jurisdiction Act, 1879, the act of 1848, did not extend to informations, complaints or other proceedings under any statutes relating to the *excise, customs, stamps, taxes, or post-office* (*n*).

Bastardy.

There is a class of cases in which a special and extraordinary duty is cast upon justices, which are not within

(*i*) 44 & 45 Vict. c. 24.

(*k*) 11 & 12 Vict. c. 43. Sect. 37, *ante*, p. 25 *et seq.*

(*l*) Sect. 85. This exemption, however, does not include an order for costs of maintenance consequent on an order of removal, and therefore a complaint of the nonpay-

ment of such costs must be made within six months according to sect. 11 of 11 & 12 Vict. c. 43. *Hill v. Thorncroft*, 30 L. J., M. C. 52.

(*m*) 42 & 43 Vict. c. 49, s. 54.

(*n*) 42 & 43 Vict. c. 49, s. 2.

the Summary Jurisdiction Acts, such, for instance, as in the case of forcible entry, the proceedings upon view where a tenant deserts premises leaving no distress to countervail the arrears of rent, the recovery of premises by the landlord upon the determination of the tenancy, and the view and proceedings where a highway is to be stopped up or diverted. The enforcing payment of poor and highway rates is not within the operation of the act, but general forms for this purpose were given in an act passed in the next session, 12 Vict. c. 14. It was doubted whether the 11th section of 11 & 12 Vict. c. 43, limiting the period for making a complaint, &c., to six calendar months after the matter of complaint arose, extended to proceedings by auditors of Poor Law districts to recover sums certified by them to be due in the accounts of officers and others; and to remove such doubts, it was enacted by 12 & 13 Vict. c. 103, s. 9, that this limitation clause should not apply to such proceedings, but that they should be commenced within nine calendar months(*o*). The provisions of s. 11 of 11 & 12 Vict. c. 43, do not extend to recovery of poor rates. The matter was, however, left in some doubt till the recent decision in *R. v. Price* (*p*), which decided that a justice of the peace sitting to issue a warrant of distress for the recovery of poor rates, is not a Court of summary jurisdiction within the meaning of the Summary Jurisdiction Act, 1879, and the provisions contained in that statute in no way apply to proceedings for recovery of poor rates (*q*). An adjudication by two justices under the Lands Clauses Consolidation Act, 1845, and the Railway Clauses Consolidation Act, 1845, of the sum (below 50*l*.) to be paid by a railway company as compensation to a party whose lands have been injuriously affected by the exercise of their statutory powers, is not an order within

(*o*) See *R. v. Tyrwhitt*, 15 Q. B. M. C. 49; 42 L. T. 539.
249.

(*q*) See s. 10 of Summary Jurisdiction Act, 1884, *post*, Appendix.
(*p*) 5 Q. B. D. 300; 49 L. J.,

11 & 12 Vict. c. 43, s. 1 (*r*). The adjudication of two justices under sect. 22 of the Land Clauses Act (8 Vict. c. 18), as to the value of an interest in lands required for the execution of an undertaking within that act is not an "order for the payment of money or otherwise" within 11 & 12 Vict. c. 43, s. 1, and therefore need not be made within such time (*s*).

The following pages of this work will be found to present, substantially and prominently, the *general* law relating to summary convictions, and, incidentally, to orders made by justices ; at the same time sufficient of the former law will be retained to enable practitioners to apply it to the *exceptional* cases lately mentioned. Where, however, the provisions of the Summary Jurisdiction Acts, or general propositions resulting therefrom, are stated, they must be taken subject to the preceding remarks, and therefore as inapplicable to the excepted cases. It would lead to almost endless repetition, and to some confusion, if the comparatively few instances excluded from these statutes were to be expressly noticed throughout the work whenever they do not come within the general scope of its observations.

The Acts in question are of very great importance considered as the governing Acts upon the subject of summary convictions and orders, for their provisions have been generally incorporated in subsequent penal statutes.

(*r*) *R. v. Edwards*, 13 Q. B. D. 586 ; 53 L. J., M. C., 149 ; 51 L. T. 586. (*s*) *Morant v. Taylor*, 1 Ex. D. 188 ; 45 L. J., M. C. 78.

SECT. 2.—*Information or Complaint.*

| | | | |
|---|----|--|----|
| 1. <i>When necessary</i> | 72 | 9. <i>When one Information against several</i> | 81 |
| 2. <i>Distinction between Information and Complaint</i> | 73 | 10. <i>When in Writing</i> | 82 |
| 3. <i>Effect of, in giving Jurisdiction</i> | 73 | 11. <i>When upon Oath</i> | 83 |
| 4. <i>When it must be received</i> | 75 | 12. <i>In presence of Magistrate</i> | 84 |
| 5. <i>When it should be laid</i> | 76 | 13. <i>To be single</i> | 84 |
| 6. <i>Before whom</i> | 76 | 14. <i>Negating Exceptions</i> | 85 |
| 7. <i>By whom</i> | 77 | 15. <i>Not recited in Conviction</i> | 85 |
| 8. <i>Against whom</i> | 80 | 16. <i>Variance between, and Evidence</i> | 86 |
| <i>Feme covert</i> | 80 | 17. <i>Detaining Party charged on</i> | 86 |
| <i>Infant</i> | 80 | 18. <i>Justice bound to proceed upon</i> | 87 |
| <i>Master for act of Servant</i> | 80 | 19. <i>Declining Jurisdiction on</i> | 87 |
| <i>Aiders and Abettors</i> | 81 | | |

Information,
when neces-
sary.

First. It is requisite in all summary proceedings of a penal nature that there should be an information or complaint, which is the basis of all the subsequent proceedings, and without which the justice is not authorized in intermeddling (*t*), except where he is empowered by statute to convict on view, as by 8 Hen. 6, c. 9, for forcible detainers; 5 Geo. 4, c. 83, s. 3, for certain offences by vagrants; 3 Geo. 4, c. 126, s. 132, the General Turnpike Act; 5 & 6 Will. 4, c. 50, s. 78, for certain offences against the Highway Act (*u*), and by 26 & 27 Vict. c. 93, s. 3, in the case of

(*t*) 1 Wms. Saund. 262, n. (1); *R. v. JJ. Bucks*, 3 Q. B. 800, 807; *R. v. Bolton*, 1 *Id.* 66; *R. v. Fuller*, 1 *Ld. Raym.* 509; per *Parke, B.*, in *R. v. Millard*, 17 *Jur.* 400; 22 *L. J.*, *M. C.* 108, *S. C.*; *Barber, &c. v. Nottingham Railway Company*, 33 *L. J.*, *C. P.* 193; *Brookshaw v. Hopkins*, *Lofft*, 240; *R. v. Hareby*, *Andr.* 361; *R. v. Birnie*, 1 *Moo. & R.* 160, 5 *C. & P.* 206; *Stevens v. Clark*, *Car. & M.* 509. The same principle applies to other limited jurisdictions created by statute; thus, a presentment is the foundation of the jurisdiction of the commissioners of sewers, and if there be not one, their rate is void; *Wingate v. Wait*, 6 *M. & W.* 745. See also *R. v. Shaw*, 34 *L. J.*, *M. C.* 169; *Doe v. Bristol and Exeter Railway Company*, 6 *M. & W.* 320; *R. v. Croke*, *Cowp.* 26;

Christie v. Unwin, 11 *A. & E.* 373; *R. v. Hartley Wintney Union*, 1 *Q. B.* 677; *R. v. Inhabitants of Mawgan*, 8 *A. & E.* 496; also sect. 85, and *Wright v. Overseers of Frant*, 32 *L. J.*, *M. C.* 204; *Blake v. Beech*, 45 *L. J.*, *M. C.* 111. Where prisoners were apprehended and charged before a magistrate with felony (under sect. 10 of 24 & 25 Vict. c. 97), but being remanded, they were afterwards charged with a misdemeanor only (under sect. 52 of the same statute) without any fresh information being laid, and no objection was taken on this ground until after the case had been heard on its merits, it was held that the justices had jurisdiction to convict of the latter offence; *Turner v. Postmaster-General*, 34 *L. J.*, *M. C.* 10; *post*, p. 109.

(*u*) As to convictions on view,

reservoirs constructed under the Waterworks Clauses Act being in a dangerous state.

The proceeding which forms the groundwork of a *conviction* is termed "laying" or "exhibiting an information," while the similar proceeding for the obtaining of an *order* of justices is termed "making a complaint" (v). This distinction is preserved throughout the Summary Jurisdiction Act, 1848, and will be followed in the present work.

Distinction between information and complaint.

A sufficient information by competent persons, relating to a matter within the magistrate's cognizance, gives him jurisdiction, irrespective of the truth of the facts contained in it. His authority to act does not depend upon the veracity or falsehood of the statements, or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation, and he will be protected although the information may disclose no legal evidence or purport to be founded upon inadmissible evidence or upon mixed allegations of law and fact (x).

Effect of information in giving jurisdiction.

In some cases of frivolous information a justice has power to award amends to be paid by the informer or complainant to the party informed or complained against for his loss of time and expenses in the matter (y).

As on the one hand the information is not invalidated by reason of the statements being false, so, on the other, it cannot be rendered valid by the testimony offered in support of it, for the office of the evidence is to prove, not to supply, a legal charge (z).

The adjudication of the justices is confined within the

Limits the adjudication.

see *Jones v. Owen*, 2 D. & R. 600 ; *R. v. Jones*, 12 A. & E. 684 ; *Nixon v. Nanney*, 1 Q. B. 747.

(v) The distinction between orders and convictions is pointed out in the chapter on Convictions.

(x) *Cave v. Mountain*, 1 M. & G. 257, 264, n. ; *R. v. Rotherham*, 3 Q. B. 776 ; *R. v. Bolton*, 1 Id. 66, 75 ; *Mills v. Collett*, 6 Bing. 85 ; *R. v. Bidwell*, 1 Den. C. C. 222 ; 17 L. J., M. C. 99. In *Sir*

Edward Clere's case, Cro. Eliz. 130, the Court said, "If a man be accused to a justice of peace of an offence for which he causeth him to be arrested by his warrant, although the accusation be false, yet he is excusable."

(y) 35 & 36 Vict. c. 93 (The Pawnbrokers' Act, 1872), s. 47.

(z) *R. v. Wheatman*, Doug. 435 ; *Wiles v. Cooper*, 3 A. & E. 524, 531.

limits of the information or complaint (a). Thus, where, on an application for sureties to keep the peace, an assault as well as a threat was proved, and the justices not only ordered the defendant to find sureties, but also, notwithstanding the protest of the complainant, convicted the defendant of the assault, a *certiorari* was granted for the purpose of quashing the conviction. Mr. Justice *Erle* said :—"It is clear that the party assaulted has a choice of several remedies, civil as well as criminal. He may proceed by action or by indictment, or he may apply for a summary conviction under the stat. (9 Geo. 4, c. 31, s. 27), and if he applies for the latter, he is barred from any further proceedings. I am of opinion that the justices had no jurisdiction to convict summarily of an assault, when, as in the present case, it is clear that the complainant did not call upon them to exercise that jurisdiction. I agree that when it is left in doubt whether or not the complainant wished for an adjudication, every intendment must be made in favour of the justices" (b). A court of summary jurisdiction has no power to convict of a common assault, unless the party aggrieved, or some one on his behalf, complains of the assault, with a view to the adjudication of the Court upon it (c).

On an information (under the 5 Geo. 4, c. 83, s. 4), for being found at night in a dwellinghouse for the purpose of feloniously stealing certain provisions, the justices found that the defendants were in the house of A. B., with his servants, for the purpose of joining in the taking and consuming of provisions which were his property, and without his knowledge or consent; the conviction was quashed, on the ground that it did not find that which was charged in the information (d); and where a defendant was summoned

(a) As to variance between the evidence and information, see *post*, p. 86.

(b) *R. v. Deny*, 20 L. J., M. C. 189; and see *R. v. Soper*, 3 B. & C. 857.

(c) *Nicholson v. Booth*, 57 L. J., M. C. 43; 58 L. T. 187.

(d) *Kirkin v. Jenkins*, 82 L. J., M. C. 140. Affidavits are admissible for the purpose of showing what evidence was given; *Wilkin-*

on a charge of being drunk and guilty of riotous behaviour, under 10 & 11 Vict. c. 89, s. 29, and the magistrates convicted him of drunkenness, under 21 Jac. 1, c. 7, the conviction was held to be bad (*e*). So, on a summons under the Metropolitan Police Act, to answer for an assault upon a constable in the execution of his duty, the defendant cannot be convicted of a common assault under 24 & 25 Vict. c. 100, s. 42 (*f*), the effect of the charge as well as the statute being different (*g*). But, on an information charging an assault, the justices may convict of that offence, although evidence is given which, if true, would show that a rape had been committed on the informant (*h*).

As it is the duty of justices to enforce those acts, the execution of which is referred to them, they cannot properly refuse to receive an information regularly brought before them, and upon such refusal the Queen's Bench Division will issue a *mandamus* or grant a rule (*i*) to compel them to receive it (*k*). Formerly, if justices were compelled by *mandamus* to do an act, and it turned out after all that the act was one which they could not do legally, they were liable to an action; and, therefore, where they had reasonable ground for doubting their jurisdiction, the Court would not compel them to act (*l*); but no responsibility is now incurred by them for anything done in obedience to a peremptory writ of *mandamus* or a rule in the nature of a *mandamus* (*m*). Alluding to

When the information must be received.

son v. Dutton, 32 L. J., M. C. 152. See also *Turner v. Postmaster-General*, 34 *Id.* 10, ante, p. 72, n. (*t*); and *Gelan v. Hall*, 27 L. J., M. C. 78.

(*e*) *Martin v. Pridgeon*, 28 L. J., M. C. 179; and see *Soden v. Cray*, 7 L. T. 324.

(*f*) *R. v. Brickhall*, 33 L. J., M. C. 156.

(*g*) Per *Crompton, J.*, in *Turner v. Postmaster-General*, 34 L. J., M. C. 10—12.

(*h*) *Wilkinson v. Dutton*, *supra*.

As to variance between the information and the evidence, see *post*, p. 86.

(*i*) Under 11 & 12 Vict. c. 44, s. 5.

(*k*) *R. v. Newton*, 1 Stra. 413; *R. v. Tod*, *Id.* 580; *R. v. Benn*, 6 T. R. 198. The subject of declining jurisdiction is discussed *post*, p. 87.

(*l*) *R. v. JJ. Buckinghamsh.*, 1 B. & C. 485; *Ex parte Fulder*, 8 Dowl. 535; *R. v. Godolphin*, 8 A. & E. 338.

(*m*) 11 & 12 Vict. c. 44, s. 5.

this alteration in the law, Mr. Justice *Coleridge* observed:—
 “ In consequence of the stat. 11 & 12 Vict. c. 44, by which justices are protected when they act in obedience to the process of this Court, the burden is shifted ; we may issue our process to the justices, even where the law is not quite clear, and the person to be affected by the act commanded may try the question by resisting the order of justices ” (*n*). The acts conferring authority upon justices vary in the terms used for that purpose: by some they are “ authorized and empowered ; ” by others “ authorized, empowered and *required*,” or “ enjoined.” Some statutes inflict a penalty upon the refusal to receive an information, for which an action may be brought (*o*).

When it
should be
laid.

The information, as we have seen, must be laid, or complaint made, within the time limited by the particular statute on which it is founded ; if no period is fixed by the statute, it must be within six calendar months from the time when the matter of the information or complaint arose (*p*). Care must be taken that it is not laid prematurely, as by some statutes an interval must elapse before any prosecution.

Before whom.

The information must be laid before a magistrate having jurisdiction over the subject of the charge (*q*). One justice is competent to receive it, except, as it seems, when the

(*n*) *R. v. Cotton*, 15 Q. B. 574. In *R. v. Brown*, 13 Q. B. 654, the Court held the question to be too doubtful to be decided upon a rule, and left the applicants to move for a mandamus or to try the question by appeal.

(*o*) *Smith v. Langham*, 2 Sh. 234, was an action for a penalty of 100*l.* against a justice for having refused to administer an oath to an informer, under 22 Car. 2, c. 1, s. 11 ; and see *Skin*. 61.

(*p*) *Ante*, p. 58. 11 & 12 Vict. c. 43, s. 11 ; 12 & 13 Vict. c. 103, s. 9 ; *Dowell v. Benningfield*, Car. & Marsh. 9 ; see the Metropolitan Police Act, 2 & 3 Vict. c. 71, s. 38 ;

R. v. Tyrwhitt, 15 Q. B. 249 ; *Morant v. Taylor*, *Sweetman v. Guest*, *ante*, p. 60. Where the offence is the neglect or refusal to do an act, as to supply a copy of accounts, the six months' limit dates from the time of the demand and refusal. *Dudley Gas Co. v. Warmington*, 50 L. J., M. C. 69 ; 44 L. T. 475 ; *Jacomb v. Dodgson*, 32 L. J., M. C. 113 ; 3 B. & S. 461 ; *Reeves v. Yates*, 31 L. J., M. C. 241 ; 1 H. & C. 435.

(*q*) *Ante*, p. 18 *et seq.* See *ante*, p. 38, as to the conviction being by a different magistrate from the one who receives the information.

statute on which the information is founded expressly requires to be laid before two justices (r).

It may be laid by the informant in person or by his By whom. counsel or solicitor, or other person authorized in that behalf (s). By 15 & 16 Vict. c. 61, s. 3, any officer of inland revenue or any person authorized by the commissioners of inland revenue, or the solicitor of inland revenue in that behalf, may prosecute, conduct or defend any complaint, information or other proceeding to be heard before any justice or justices of the peace in any part of the United Kingdom relating to any duty or matter under the care or management of the said commissioners, whether such person be a solicitor, advocate or writer to the signet in any Court of law or equity or not, anything in any act to the contrary thereof notwithstanding. Generally any person may be informer (t), but sometimes the statute giving the penalty allows only particular persons to inform (u). In some cases of injury to private property, where the penalty is intended as a compensation to the owner, and in which the dissent of the owner is essential to constitute the offence (as on the former stat. of 5 Geo. 3, c. 14, for the protection of private fisheries), it is requisite that either the information should be laid on behalf of the owner, or some other proof of his dissent adduced along with the charge, although the statute itself may not profess in terms to make that a condition, for, unless it appears that the owner dissented from the act, it does not amount to an offence. It is now therefore settled, that, in every conviction of this nature, the proceeding before the magistrate must be at the instance of the owner (x). Such

(r) 11 & 12 Vict. c. 43, s. 29; *R. v. Griffin*, 9 Q. B. 155.

(s) 11 & 12 Vict. c. 43, s. 10.

(t) *Exp. Penal Statutes*, 11.

(u) See *R. v. Hicks*, 4 El. & Bl. 633; 24 L. J., M. C. 94, where it was held, upon the construction of the Torquay Market Act (15 & 16 Vict. c. cxxxviii, s. 31), that an

information for penalties incurred under it could be laid only by the market company.

(x) *R. v. Daman*, 2 B. & A. 378; 1 Chit. 147, S. C.; *R. v. Harpur*, 1 D. & R. 222; 1 D. & R., M. C. 67. And see *R. v. Corden*, 4 Burr. 2279; Bosc. 17; *R. v. Edwards*, 1 East, 278, 281.

a conviction therefore cannot be founded upon the information of a common informer (*y*). Where the defendant was summoned for fishing without a licence in a fishery district subject to a board of conservators, upon the information and complaint of a duly appointed water-bailiff in the employment of the board, and it was not proved that such bailiff was authorized by the board to institute the proceedings:—it was held that the penalty for the offence could only be recovered by the board of conservators, and therefore the bailiff was not entitled to institute the proceedings, and the defendant was not liable to be convicted (*z*).

The complaint for a fraudulent removal of goods is required by 11 Geo. 2, c. 19, s. 4, to be made in writing by the landlord, his bailiff, servant or agent, and where it did not appear on the face of the adjudication or commitment that it had been so made, the party committed under it was discharged (*a*).

In some cases, however, the information need not be at the instance of the aggrieved party, even although the penalty or some part of it is to be paid to him, and the summary conviction is to protect the offender from other proceedings, as under 24 & 25 Vict. c. 96, s. 33, for stealing growing trees (*b*). An information for trespass in search of game need not be at the instance of a party interested in the land or game (*c*). Sometimes the information can be laid only by the Attorney or Solicitor General, as under 32 & 33 Vict. c. 24, for omitting to print

(*y*). And see 1 East, 281, in arg.

(*z*) *Anderson v. Hamlin*, 25 Q. B. D. 221; 59 L. J., M. C. 151; *R. v. Cubitt*, 22 Q. B. D. 622; 58 L. J., M. C. 132.

(*a*) *R. v. Fuller*, 2 D. & L. 98; *Coster v. Wilson*, 3 M. & W. 411; *R. v. Davis*, 5 B. & Ad. 551.

(*b*) *Tarry v. Newman*, 15 M. & W. 645; 15 L. J., M. C. 160, cited and approved of by Hill, J., in *Caswell v. Morgan*, 28 L. J., M. C. 209. Unless, however, the party

aggrieved make, authorize or ratify the complaint, his remedy by action, it seems, is not barred by reason of the conviction. See per Parke, B., in *Tarry v. Newman*, 15 M. & W. 654. That case was decided on 7 & 8 Geo. 4, c. 29, s. 39, but the language is the same in sect. 33 of 24 & 25 Vict. c. 96.

(*c*) *Middleton v. Gale*, 8 A. & E. 155; *Morden v. Porter*, 29 L. J., M. C. 213.

upon books the printer's name, &c. (*d*). In the metropolis an order may be made for the abatement of a nuisance either at the instance of the sanitary authority or of an individual (*e*). And under the Coal Mines Regulation Act, 1887 (*f*), no prosecution shall be instituted against the owner, agent, manager or under-manager of a mine, to which that act applies, for any offence under the act not committed personally by such persons, which can be prosecuted before a Court of summary jurisdiction, except by an inspector of mines or with the consent in writing of a secretary of state; and in the case of any offence, of which the owner, agent, manager or under-manager of a mine is not guilty, if he proves that he has taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution

(*d*) See *R. v. Johnson*, 8 Q. B. 102, in which case it was held, that where a statute creating offences is in part repealed, and the residue is to be construed as one act with the repealing act by which new offences are created, a clause in such subsequent act, providing that all proceedings for penalties shall be in the name of the Attorney-General, does not apply to proceedings for offences created by the first act. See also *Boyce v. Higgins*, 14 C. B. 1. Proceedings for penalties relating to lotteries, under 42 Geo. 3, c. 119, must be in the name of the Attorney-General, and by action, whether they are private or state lotteries; *R. v. Tuddenham*, 9 Dowl. 937. See also 8 & 9 Vict. c. 74, s. 4.

(*e*) 54 & 55 Vict. c. 76, ss. 5, 12. By the 34 & 35 Vict. c. 87, no prosecution for an offence under 29 Car. 2, c. 7, is to be instituted except with the consent in writing either of the chief officer of police, of the police district in which the offence is committed, or of two justices of peace having jurisdiction in the place where offence committed. No such prosecution can

be heard before the justices by whose consent the same has been instituted. In *Cole v. Coulton*, 2 El. & El. 695; 29 L. J., M. C. 125, an information was laid by a clerk to commissioners under the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 35, which enacts that the penalty shall be awarded to the corporation of the town or the commissioners, according as the proceedings for the penalty shall be taken on behalf of one or the other. The clerk had no authority otherwise than from having published by order of the commissioners a notice that the section in the Town Police Clauses Act, 1847, against alehouse-keepers allowing prostitutes to assemble in their houses, would be enforced in the town. Cockburn, C. J., held that the offence was against public policy, and therefore any one might be the informer so long as he professed that the penalty should enure to the benefit of one of the parties named; and Crompton, J., was of opinion that the authority of the commissioners to prosecute sufficiently appeared from the facts.

(*f*) 50 & 51 Vict. c. 58, s. 65.

against such person; if satisfied that he had taken such reasonable means as aforesaid.

Under a statute requiring the complaint to be made by the overseers, the Court held it sufficient for one overseer to make it on behalf of himself and the other (*g*).

Against
whom.

A married woman may be convicted on a penal statute if she has committed an offence without the coercion, actual or implied, of her husband (*h*); and it is not necessary that her husband should be joined in the conviction (*i*).

Infant.

An infant may be convicted on a penal statute, provided he was sufficiently *doli capax* to incur responsibility (*k*).

Master for
act of servant.

The general rule of law is, that no one can be made criminally responsible for the acts of third persons (*l*), but in some cases a man may be brought within a penal statute by the acts of his agents or servants. The employment of an agent in the defendant's usual course of business

(*g*) *R. v. Bedingham*, 5 Q. B. 653. By succeeding overseers, *East Dean v. Everett*, 30 L. J., M. C. 117. It is not necessary to have the consent of the Board of Guardians for proceeding against a man for running away and leaving his wife chargeable to the parish. *R. v. Mirehouse*, 32 L. J., M. C. 90.

(*h*) *R. v. Cruse*, 8 C. & P. 541.

(*i*) *R. v. Crofts*, 2 Str. 1120. By the Customs Consolidation Act (39 & 40 Vict. c. 36), s. 240, where any married woman shall be convicted before any justice of any offence against the Customs Acts, she shall, in default of paying any penalty she may have incurred, be liable to be committed to prison.

(*k*) No act done by a person under seven years of age is a crime, and no act done by any person over seven and under fourteen years of age is a crime unless it be shown affirmatively that such person had sufficient capacity to know that the act was wrong. (Steph. Digest, p. 15.) In misdemeanors (and probably the same rule will be found

to prevail with regard to offences punishable on summary conviction) an infant is privileged by reason of his nonage, if the offence charged be a mere non-feasance (unless it be such a matter as he is bound to do by reason of tenure or the like, as to repair a bridge, &c., *R. v. Sutton*, 3 A. & E. 597), because laches shall not be imputed to him. But for any notorious breach of the peace, as riot, battery, or for perjury or cheating, or the like, he is equally liable as a person of full age, if he had discretion to do the act with which he is charged, or, in other words, was *doli capax*. An infant is liable also civilly for trespass or any tort independent of contract; *Burnard v. Haggis*, 14 C. B., N. S. 45; 32 L. J., C. P. 189; *Bartlett v. Wells*, 1 B. & S. 836; 31 L. J., Q. B. 57; and *Wright v. Leonard*, 11 C. B., N. S. 258; 30 L. J., C. P. 365.

(*l*) See per *Crompton, J.*, *Hearne v. Garton*, 2 El. & El. 66; 28 L. J., M. C. 216.

is sufficient *evidence* in such cases, whence the magistrates may, if they think fit, *presume* that such an agent was authorized to do the prohibited act with which it is sought to charge the principal (*m*).

Persons aiding, abetting, counselling or procuring the commission of any offence punishable on summary conviction may be convicted either with the principal, or before or after his conviction, and are liable to the same punishment. They may be proceeded against either in the place where the principal was or may be convicted, or where the offence of aiding, &c., was committed (*n*). An aider and abettor may be convicted though the principal be acquitted (*o*). Aiders and abettors.

An information may be against one of several joint-owners of property in proceedings for a wrongful act (*p*). Joint owners.

Where the act is such that several may join in it, all the offenders may be included in the same information and conviction (*q*). But where separate convictions were drawn up upon a joint information, the Court refused to Joint conviction.

(*m*) *Attorney-General v. Siddon*, 1 C. & J. 220; *Attorney-General v. Riddle*, 2 Id. 493; *Attorney-General v. Burges*, Bunb. 223; *Mitchell v. Torup*, Parker's Rep. 227; *Hern v. Nichols*, 1 Salk. 289; *R. v. Stephens*, 35 L. J., Q. B. 251; *Bosley v. Davies*, 1 Q. B. D. 84; 45 L. J., M. C. 27. Owner of market when liable for a nuisance therein, *Draper v. Sperring*, 10 C. B., N. S. 113; 30 L. J., M. C. 225; Keeper of place of public resort when responsible as principal for acts of servant, and servant responsible as aider and abettor, *Wilson v. Stewart*, 3 B. & S. 913; 32 L. J., M. C. 198; A master is sometimes liable to penalties under the Licensing Acts for the act of a servant left in charge, *Mullins v. Collins*, 43 L. J., M. C. 67; Chartermaster of a coal mine aiding and abetting banksmen to violate rules regulating the working of the mine, *Howell v. Wynne*, 32 Id. 241; Owner of a vessel may be convicted for obstructing

a navigable river, viz. throwing rubbish therein (under 54 Geo. 3, c. 159, s. 11), although he was not on board at the time when the act was done, *Michell v. Brown*, 28 L. J., M. C. 53. As to the parties liable for sending dangerous goods by railway, see *Hearne v. Garton*, Id. 216.

(*n*) 11 & 12 Vict. c. 43, s. 5. As to punishment, see 24 & 25 Vict. c. 96, ss. 97, 99, and c. 97, s. 63. See *Ex parte Smith*, 3 H. & N. 227; 27 L. J., M. C. 186; *Wilson v. Stewart*, and *Howell v. Wynne*, *supra*; *Stacey v. Whitehurst*, 34 L. J., M. C. 94; 11 L. T. 710.

(*o*) *R. v. Burton*, 32 L. T. 539; 13 Cox, 71.

(*p*) *R. v. JJ. Monmouthsh.*, 26 L. J., M. C. 183.

(*q*) *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28. See Public Health (London) Act, 1891, s. 120.

order the justices to alter the conviction by making it a joint one (*r*).

When to be
in writing.

Whenever the information is required by statute to be in writing, that form must be preserved, but, unless expressly directed, it is not necessary that it should be so (*s*). The statute 11 & 12 Vict. c. 43, makes no alteration in this respect, although it seems to assume that which is indeed the almost invariable practice, namely, that the information will be in writing, by providing for statements therein as to the ownership of property (*t*), the negating of exemptions (*u*), and for variances between the information and the evidence (*x*). These provisions, and the fact that a form of information is given in the Summary Jurisdiction Rules, 1886 (*y*), seem to infer that a written information was intended although the Summary Jurisdiction Acts do not in terms require one. Sometimes a statute expressly dispenses with a written information, as in the General Highway Act (5 & 6 Will. 4, c. 50, s. 101), and the General Turnpike Act (4 Geo. 4, c. 95, s. 83); so, by 11 & 12 Vict. c. 43, s. 8, it is declared, that in all cases of complaint upon which a justice or justices may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament, upon which such complaint shall be framed.

(*r*) *Re Clee and another*, 21 L. J., M. C. 112; *R. v. Littlechild*, L. R., 6 Q. B. 293; 40 L. J., M. C. 137.

(*s*) Per *Parke*, B., *R. v. Millard*, 22 L. J., M. C. 108; *S. C.*, *R. v. Shaw*, 34 L. J., M. C. 169; *R. v. Bedingham*, 5 Q. B. 653; *Ex parte Perham*, 5 H. & N. 80; 29 L. J., M. C. 33, 35; *Turner and another v. Postmaster-General*, 34 *Id.* 10; and see *R. v. Rawlins*, 8 C. & P. 439. 11 Geo. 2, c. 19, s. 4, relating to the fraudulent removal of goods, requires the complaint to be in writing; see *R. v. Fuller*, 2 D.

& L. 98; and see 11 & 12 Vict. c. 42, s. 8; *Coster v. Wilson*, 3 M. & W. 411; *R. v. Davis*, 5 B. & Ad. 551. An adjudication, under the Lands Clauses Act, of compensation to a party whose lands have been injuriously affected is in the nature of an award, and need not be in writing; *R. v. Combe*, 32 L. J., M. C. 67.

(*t*) Sect. 4.

(*u*) Sect. 14.

(*x*) Sect. 9.

(*y*) Form [I], *post*, Appendix.

Nor is it requisite that the information or complaint be upon *oath*, if not enjoined by the letter of the statute (z), unless a warrant to apprehend the person charged is issued in the first instance instead of a summons, in which case the matter of the information must always be substantiated by the oath or affirmation of the informant, or of some witness on his behalf before the warrant is issued (a). Whenever, in other cases, the information is taken on oath, the justice must be careful to administer the oath before he takes the information or deposition of the party or his witnesses; for where a justice had taken the information and examination of the witnesses, with a view to a conviction on the former game laws, and then administered the oath, the Court expressed its strong disapprobation of the irregularity of such practice, and said it was the duty of the justice to administer the oath in the first instance, in order that the party should be under its sanction at the time he gave his testimony (b). Sometimes the statute, though it does not require the information to be on the oath of the informant in the first instance, yet requires the charge contained in it to be substantiated on the oath of some other person, being a credible (c) witness, before any proceedings are taken upon it (d). On application for an order in bastardy, after twelve months from the birth of the child, the summons is to be granted only on proof that the alleged father has paid money for its maintenance within that period (e), and it seems that such proof should be *upon oath*, and should be reduced into writing (f), but,

(z) 11 & 12 Vict. c. 43, s. 10: per *Parks*, B., *R. v. Millard*, 17 Jur. 400; 22 L. J., M. C. 108, S. C.; and see *R. v. Willis*, Bosc. 16; *Basten v. Carew*, 3 B. & C. 649; 5 D. & R. 558; 2 D. & R. (M. C.) 563; *R. v. Standish*, Burr. Sett. Cas. 150; *R. v. Bissax*, Burn's Justice, tit. "Distress."

(a) 11 & 12 Vict. c. 43, ss. 10. The warrant will be bad unless it state that the information was substantiated on oath; see form (6)

in schedule to summary Jurisdiction Rules, 1886, and *Caudle v. Seymour*, 1 Q. B. 889.

(b) *R. v. Kiddy*, 4 D. & R. 734.

(c) *I. e.*, competent.

(d) *R. v. Scotton*, 5 Q. B. 493; 13 L. J., M. C. 58; and see *R. v. Berry*, 28 L. J., M. C. 90; *R. v. Watts*, 33 L. J., M. C. 63.

(e) 35 & 36 Vict. c. 65, s. 3.

(f) *R. v. Fletcher*, L. R., 1 C. C. R. 320; 40 L. J., M. C. 123.

as the proceeding is rather civil than criminal, the omission of the oath may be waived by the defendant appearing and going into the merits of the case without taking the objection (*g*).

Should be
taken in
presence of
magistrate.

The deposition should be made in the presence of the magistrate; and where it was taken in his absence by his clerk, it was held to be irregular, and to be no justification for proceedings founded upon it (*h*).

To be for one
offence only.

Formerly several offences might have been included in one information or complaint, but now it should be for one offence or matter of complaint only (*i*). This, however, does not prevent a principal and an abettor from being charged in the same information, nor the offence from being laid as having been committed on divers days and times between two dates (*k*). The swearing of several profane oaths on one and the same occasion is but one offence, although the offender is liable to a penalty for each oath so sworn (*l*).

This was decided in the *Queen v. Scott* (*m*). Lord Esher in commenting on this decision said (*m*): "In the case of the *Queen v. Scott*, the effect of the decision seems to me to be this: where several oaths are made use of on one occasion it is but one swearing, and, consequently there is but one offence, and, therefore, only one penalty is incurred, though such penalty is cumulative, being at the rate of 2s. for each oath uttered; but if the same set of oaths were used on distinct occasions, though they all occurred on the same day, there would be several offences, and a

(*g*) *R. v. Berry*, 28 L. J., M. C. 90, *diss.* Martin, B.; *R. v. Turner*, 34 L. J., M. C. 10.

(*h*) *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Constable*, *Id.* 894, n. (*a*); *R. v. JJ. Darton*, 12 A. & E. 78; 3 P. & D. 483, S. C.

(*i*) 11 & 12 Vict. c. 43, s. 10. See *R. v. Cridland*, 7 E. & B. 858; 27 L. J., M. C. 28; *Stannaught v. Hazeldine*, 4 C. P. D. 191. See *post*, Convictions.

(*k*) *Onley v. Gee*, 30 L. J., M. C. 222.

(*l*) *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15. Any information, complaint, warrant, or summons made or issued for the purposes of the Public Health Acts, may contain in the body thereof or in a schedule thereto several sums; 53 & 54 Vict. c. 59, s. 8.

(*m*) *Milnes v. Bale*, L. R. 10 C. P. 591; 44 L. J., C. P. 336.

penalty would be incurred for each distinct swearing. There is no decision that if a man swore at one time of the day, and at another person at another time of the day, he would not be liable to two penalties. It seems to me that in such a case he would be liable to two penalties because there would be two offences."

The inclusion of two offences in one information is a "defect in substance" within the meaning of s. 1 of the Summary Jurisdiction Act, 1848, and no objection to the information can be allowed in respect of it. If on the hearing it is objected that information discloses two offences the prosecutor may be required to elect on which charge he will proceed (*n*). It must be determined by the particular statute whether several acts on the same day, and acts extending over several days, constitute but one offence or several (*o*).

The description of the offence in the words of the act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, is to be sufficient in law (*p*). Description
of offence.

It is no longer necessary to refer to the rules which related to the negating of exceptions in the description of the offence, because the Summary Jurisdiction Act, 1879 (*q*), declares that any exception, exemption, proviso, excuse or qualification may be proved by the defendant, but need not be specified or negated in the information or complaint. Negating
exceptions.

Before the statute 11 & 12 Vict. c. 43, the information, as well as the evidence by which it was supported, was recited in the conviction, and was therefore open to objection as a part of it. The information was then required distinctly to set forth the day and year on which—the place where—and the name and style of the justices before whom Not recited in
conviction.

(*n*) *Rodgers v. Richards and others*,
[1892] 1 Q. B. 555.

(*p*) 42 & 43 Vict. c. 49, s. 39.

(*o*) *R. v. Scott*, 33 L. J., M. C. 15;
4 B. & S. 368.

(*q*) 42 & 43 Vict. c. 49, s. 39,
sub-s. 2.

Variance.

Variance
between in-
formation and
evidence.

it was exhibited, and also the charge itself. Now, however, the information does not appear on the face of the conviction, and no objection can be taken for any defect in it, whether it be a defect in substance or in form, nor (except for the purpose of adjournment) to any variance between it and the evidence adduced in support of it (*r*); but this does not justify an information for one offence and a conviction for a different one under another Act of Parliament, or punishable in a different manner (*s*). Special provision is made for variances as to the time and place assigned to the offence. These are not to be deemed material, if it be proved that the information was in fact laid within the time limited by law, and that the offence was committed within the jurisdiction of the justices by whom the information is heard. But, if such or any other variances between the information and the evidence appear to the justices at the hearing to be such that the party charged has been thereby deceived or misled, they may adjourn the hearing to a future day, on such terms as they think fit, and in the meantime may commit the defendant to prison or discharge him on recognizance, with or without sureties (*t*). Notwithstanding these important changes in the law, the decisions which have proceeded upon that part of the information containing the charge are still applicable to convictions, which must state the offence and the time and place of its having been committed (*u*). We shall therefore consider them under that head.

Detaining
party charged
on informa-
tion.

It may here be noticed that the wrongful detainer of a party against whom an information has been laid does

(*r*) 11 & 12 Vict. c. 43, ss. 1, 9.

(*s*) *Martin v. Pridgeon*, 1 El. & El. 778; 28 L. J., M. C. 179; see *ante*, p. 75.

(*t*) 11 & 12 Vict. c. 43, ss. 1, 9. See *Ralph v. Hurrell*, 44 L. J., M. C. 145; 32 L. T. 816; see *post*, Appearance.

(*u*) 11 & 12 Vict. c. 43, s. 17,

and schedule. In *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81, 90, Lord Campbell, C. J., said, "The technicalities of an indictment, or even an information under a penal statute, are not required in the complaint; it is only to set forth the nature and particulars of the offence charged."

not invalidate subsequent proceedings. Thus, under the Smuggling Act (8 & 9 Vict. c. 87), s. 58, which authorized a justice to detain the party charged for a reasonable time, (in order to allow of the information, &c., being prepared), and at the expiration thereof to cause him to be brought before any two justices, who were to determine the matter, it was held, that although the party charged was detained an unreasonable time and then convicted, the conviction was still valid (x).

The magistrate being possessed of the charge, it becomes his duty either to dismiss it upon hearing, or to proceed to the examination of it (y). So where the liberation, or forfeiture, of property seized under the acts relating to the customs or excise depends upon the adjudication of the magistrates before whom the information is laid, they are bound either to proceed, or to discharge the information altogether. Thus, on an information exhibited by an officer of the customs, under 6 Geo. 1, c. 1, upon a seizure of brandy, though the facts appeared not to warrant the seizure, yet the justices refused to dismiss the information, so as to enable the party to reclaim his property: and, upon a motion stating these circumstances, a *mandamus* was issued to compel them to proceed to a determination (z).

Justice bound to proceed.

Declining jurisdiction.

Before making an application for a *mandamus*, or for a rule calling upon the justices to hear and determine a matter brought before them, care must be taken to distinguish between those cases in which they have declined to enter upon the inquiry, in consequence of a mistaken view of the law as to some preliminary point,

(x) *Van Boven's case*, 9 Q. B. 669.

(y) See 11 & 12 Vict. c. 43, s. 14. And this without taking an indemnity; *Selwood v. Mount*, 9 C. & P. 75.

(z) *R. v. Tod*, Str. 530; and see *R. v. Bolton*, 1 Q. B. 66; *Pease v. Chaytor*, 3 B. & S. 620; 32 L.

J., M. C. 121. In *Ex parte Davey*, 2 Dowl., N. S. 24, the court refused to compel justices to hear a complaint and proceed summarily under the statute relating to forcible entry and detainer, the remedy by indictment being still open.

and those in which, having entered upon the inquiry, they have actually arrived at a decision, however erroneous it may be (*a*). In the former instance, in which they are said to decline jurisdiction, the Court will compel them to proceed; in the latter, the Court will not interfere (*b*), except upon a case reserved, or there has been a want or excess of jurisdiction, or the conviction or order is bad on the face of it. In order to constitute such a declining of jurisdiction as will warrant the intervention of the Court, the wrong conclusion to which the magistrates have come in respect of the preliminary matter must be one of *law*, not of fact (*c*), or it must be a mixed question of law and fact (*d*). It is sometimes difficult to trace the dividing line in these cases. A statute provided, that if the election of any deputy should be opposed, and notice thereof in writing be given or delivered to him within a certain time, the assembled deputies should inquire into and determine the validity of the election. Proof was given that notice had been served in due time upon the wife of the party objected to at his dwelling-house, but the meeting decided that personal service was essential, and therefore refused to inquire into the validity of the election. It was held by the Court, that there had been a declining of jurisdiction under a mistake of law. With respect, however, to another party objected to, evidence was given of personal service of the notice in due time, but the meeting, not believing the statement of the witness, decided that the disputed election was valid;

(*a*) See *R. v. Dayman*, 7 El. & Bl. 672; 26 L. J., M. C. 128; *R. v. Paynter*, 7 El. & Bl. 328; 26 L. J., M. C. 102; *R. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183; *R. v. Dickenson*, 3 Jur., N. S. 1076.

(*b*) "Where there has been a taking and exercise of the jurisdiction of magistrates, even if that jurisdiction has been wrongly exercised, and in the judgment of the

court, wrongly assumed, the court will not interfere by appeal to correct it." Per Coleridge, C. J., in *R. v. Brackenridge*, 48 J. P. 293.

(*c*) Per Patteson, J. in *R. v. Recorder of Liverpool*, 1 L. M. & P. 682; 20 L. J. (N. S.), M. C. 35; *Re Pratt*, 7 A. & E. 27.

(*d*) *R. v. Hinckley*, 3 B. & S. 885; 32 L. J., M. C. 158.

the Court held, that the deputies having decided a question of fact, over which they had jurisdiction, their decision was final (*e*). Lord *Campbell* on that occasion said, "Where justices, or others, on a mistaken view of the law, refuse to hear on a point on which jurisdiction depends, we call upon them to go into the inquiry. But when they have heard and decided, we do not review their decision. On that principle, writs of mandamus to hear appeals against orders of removal have proceeded. If they mistake the law and require an unreasonable service of the notice, they decline jurisdiction; but if they have once heard and decided, their decision must be final." It matters not at what stage of the case the magistrates decline to proceed, because whether they have jurisdiction or not is the cardinal point which affects the proceedings from the beginning, however far advanced they may be (*f*). It has been suggested as a test:—Is the objection such that whatever the merits of the case, whether the defendant be guilty or not, the justices hold that they cannot decide upon the merits, owing to the objection in point of law, *e.g.* want of parties or of notice? Such holding is a declining of jurisdiction and not an adjudication (*g*). Where magistrates have a discretion vested in them, whether they will proceed or not, and, in the exer-

(*e*) *R. v. Goodrich and others*, 19 L. J., Q. B. 413; 14 Jur. 914, S. C. See *R. v. Cotton*, 15 Q. B. 569; *R. v. Blanshard*, 13 Q. B. 318; *R. v. Recorder of Liverpool*, 1 L. M. & P. 682; 20 L. J., M. C. 35; *R. v. Charlesworth*, 2 L. M. & P. 117; 20 L. J., M. C. 181; *R. v. Recorder of Bolton*, 18 L. J., M. C. 139; 2 D. & L. 510 *R. v. JJ. West Riding of Yorksh.*, 1 Q. B. 624; 2 Q. B. 331; *R. v. JJ. Carnarvon*, 2 Q. B. 325; *R. v. JJ. Flintsh.*, 2 D. & L. 143; 16 L. J., M. C. 55, S. C.; *R. v. Aston*, 1 L. M. & P. 491; 14 Jur. 1045, S. C.; *R. v. JJ. Great Yarmouth*, 4 New Sess. Cas. 313; *R. v. JJ. Kesteven*, 3 Q. B. 810; *R. v. Byrom*, 12 Q. B. 321; 17 L. J., M. C. 134;

Re Pratt, 7 A. & E. 27 (case of appeal from conviction); *Ex parte British Patent Company*, 7 Dowl. 614; *Re Clee and Osborne*, 21 L. J., M. C. 112, B. C.; *R. v. Colling*, 17 Q. B. 816; 21 L. J., M. C. 73; 16 Jur. 422; *R. v. JJ. Worcestersh.*, 3 El. & Bl. 477; *R. v. Overseers of Warblington*, 22 L. T. 304; *R. v. JJ. Bristol*, 18 Jur. 426; 3 El. & Bl. 479, n. (*a*); *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; *R. v. Mayor of Monmouth*, L. R., 5 Q. B. 251; 39 L. J., Q. B. 77 (case of notice of objection to burgess list).

(*f*) *R. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183, per *Erle*, J.

(*g*) *Id.*, per *Coleridge*, J.

cise of such discretion, have refused to proceed, the Court will not order them to do so ; but in such case they must have really exercised their discretion or judgment in the matter, and not have acted from mere caprice or from notions of what the law ought to be instead of what it is, although the statute may have said, they are to proceed "if they think fit" (*h*).

Where justices have a discretion to grant or refuse a summons, and exercise that discretion properly, the Court will not grant a mandamus to hear and determine the matter (*i*). Where justices dismissed a summons on the ground that the complaint had not been made within six months after the commission of the offence, which they considered was not a continuing offence, and the following year the same complainant laid a similar information against the defendant, when the justices, having regard to their previous decision, considered that they had no jurisdiction to go into the matter again, and refused to issue a summons. The Court held that instead of declining jurisdiction, the justices should have heard and determined whether, upon the circumstances disclosed, a summons ought to have been issued (*k*).

Criminal charges arising out of civil proceedings still pending.

As a general rule, magistrates ought not to entertain criminal charges arising out of civil proceedings which are still pending, at all events except for the purpose of holding the accused person to bail, unless the cause has been postponed to allow the criminal charge to be first disposed of. Of course, therefore, in the absence of such postponement, the Court will not compel justices to proceed with the criminal charge while the cause is pending (*l*).

(*h*) *R. v. Boteler and others*, 4 B. & S. 959 ; 33 L. J., M. C. 101 ; where see definition of judicial discretion ; *R. v. JJ. Durham*, 19 L. T. 396.

(*i*) *R. v. Huggins*, 60 L. J., M. C. 189.

(*k*) *R. v. Byrde and others*, 60 L. J., M. C. 17 ; 63 L. T. 645.

(*l*) *R. v. Ingham*, 14 Q. B. 396.

It is the practice of the Central Criminal Court not to try an indictment for perjury arising out of a civil action, until such action is determined, unless the trial of the action has been postponed by the Court, in order that the indictment may be tried first ; *R. v. Ashburn*, 8 C. & P. 50.

SECT. 3.—Of issuing the Summons.

| | | | |
|--------------------------------------|----|---|-----|
| 1. <i>Where necessary</i> | 91 | <i>Service—continued.</i> | |
| 2. <i>Dispensation of</i> | 93 | <i>for the Justices</i> | 99 |
| 3. <i>Justice to issue</i> | 94 | <i>Proof of service</i> | 100 |
| 4. <i>Form</i> | 95 | 7. <i>Not recited in Conviction</i> | 100 |
| 5. <i>When issued</i> | 96 | 8. <i>Not open to Objection</i> | 100 |
| 6. <i>Service</i> | 96 | 9. <i>Variance</i> | 100 |
| <i>Question of due service, one</i> | | 10. <i>Withdrawal of Summons</i> | 100 |

If the information appears to justify the interference of the magistrate, the next step is to give the party accused notice of the accusation, and an opportunity of answering it, by issuing a summons, containing the substance of the charge, or by granting a warrant for his apprehension (*m*). This method of proceeding is pointed out by stat. 11 & 12 Vict. c. 43, ss. 1, 2, but, independently of positive enactment, the law declares that the magistrates, to whom the cognizance of offences is referred, are bound to observe the rules of natural justice,—one of which is, that the accused should have an opportunity of being heard before he is condemned (*n*). This is indispensably required in all penal proceedings of a summary nature by justices of the peace (*o*). It is declared by Lord *Kenyon* to be an invari-

Where a summons is necessary.

(*m*) By the Criminal Law Consolidation Act (24 & 25 Vict. c. 96). s. 105, when any person is charged on the oath of a credible witness before a justice with any offence punishable on summary conviction under that act, the justice may summon the party charged to appear, &c.

(*n*) Per *Parker*, C. J., *R. v. Simpson*, 10 Mod. 379; *R. v. Dyer*, 1 Salk. 181; 6 Mod. 41; Dalt. c. 6; 1 Str. 561; *R. v. University of Cambridge* (*Dr. Bentley's case*), 1 Stra. 557; *Webb v. Batchelour*, 1 Vent. 273; Freem. 489, S. C. See also *Bagg's case*, 11 Co. 99. Lord Coke adopts as a principle of law the passage of Seneca:

“*Qui aliquid statuerit parte inaudita altera, Equum licet statuerit, haud equus fuerit.*”

“The laws of God and man both give a party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man on one occasion that even God himself did not pass sentence upon Adam before he was called upon to make his defence.” Per *Fortescue*, J., in *R. v. University of Cambridge*, *supra*.

(*o*) *R. v. Dyer* 1 Salk. 181; 6 Mod. 41; and the cases collected in 8 Mod. 154, n. (*a*). See also *R. v. Green*, Cald. 391; *Harper v. Carr*, 7 T. R. 270; *R. v. Gaskin*, 8 Id. 209; *Capel v. Child*, 2 C. & J. 558; *Stevens v. Evans*, 2 Burr. 1152, 1157—1159; *Becquet v. Macarthy*, 2 B. & Ad. 951; *Re Hammersmith Rent-charge*, 4 Exch. 87; per *Parke*, B., *Id.* 97; *Bartlett v. Kirwood* 2 El. & Bl. 771.

able rule of law (*p*); and is stated by Mr. Serjeant *Hawkins* to be implied in the construction of all penal statutes (*q*). Thus when a District Board of Works was empowered by statute to order a building to be demolished or altered, if erected without notice being first given by the owner of the building to the Board, it was held that they were bound to afford him an opportunity of showing cause why it should not be demolished before they exercised their powers, although the statute was silent on the subject. On that occasion, *Willes, J.*, said, "Every tribunal invested with the power of affecting the property of her Majesty's subjects is bound to give the parties against whom the powers are to be exercised an opportunity of being heard. This rule is universally applicable" (*r*). So jealous is the law to enforce this equitable rule, that the neglect of it by a justice, in proceeding summarily without a previous summons to the party, has been treated as a misdemeanour, proper for the interference of the Court of Queen's Bench by information (*s*); which has been granted upon affidavits of the fact (*t*). As this is a privilege of common right, which requires no special provision to entitle the defendant to the advantage of it, so it cannot be taken away by any custom (*u*).

(*p*) *R. v. Benn*, 6 T. R. 198.

(*q*) 1 Hawk. 420.

(*r*) *Cooper v. Wandsworth Board of Works*, 14 C. B., N. S. 180; 32 L. J., C. P. 185, 187.

(*s*) *R. v. Venables*, 2 Ld. Raym. 1405; per cur. *R. v. Simpson*, 1 Str. 46; *R. v. Allington*, 1 Str. 678. It is said in the report of *R. v. Heber*, 2 Barn. 101, that an information was granted against a magistrate for convicting a person without any previous notice, he happening to be present when another was convicted upon a similar charge. But when that report was cited in *R. v. Stone*, 1 East, 642, Lord Kenyon said, that Barnardiston was an inaccurate reporter, and that probably, if the conviction

was looked into, it would appear either that the defendant was not called upon for his defence, or had not proper time given him upon request. If a person voluntarily appears before a magistrate, and a charge is then made against him, it seems that neither information nor summons is necessary. Per *Erle, C. J.*, in *R. v. Shaw*, 34 L. J., M. C. 169; 12 L. T. 470; see *R. v. Carr*, 16 W. R. 137; 17 L. T. 217; and *post*, p. 99.

(*t*) *R. v. Harwood*, 2 Str. 1088; 3 Burr. 1716, 1786; *R. v. Constable*, 7 D. & R. 663; 3 D. & R. Mag. Ca. 488.

(*u*) *Dict. R. v. University of Cambridge*, 8 Mod. 163.

It may, however, be dispensed with by a statute.

Dispensation
of summons
or notice.

"No proposition can be more clearly established," said Mr. Baron *Parke*, in delivering a judgment of the Court of Exchequer Chamber (*x*), "than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding (*y*) until he has had a fair opportunity of answering the charge against him, unless, indeed, the legislature has expressly or impliedly given an authority to act without that necessary preliminary." The following case affords an illustration of an implied dispensation of notice to the party liable to be affected by the judgment of a Court:—Statutes establishing a Court of Requests for a sea-port town enacted, that process by summons might issue against persons sailing to and from the port, and that the summons might be served, "personally, or by leaving the same at the dwelling-house" of such debtor. It was held that the summons being left with the wife of a sea-faring man at his lodging, within the jurisdiction, was sufficient to warrant execution under these statutes, although the debtor, during all the proceedings, was absent on a voyage to India (*z*).

It is not necessary to issue any summons when an application for an order of justices is by law to be made *ex parte* (*a*). Application
ex parte.

(*x*) *Bonaker v. Evans*, 16 Q. B. 162, 171. See *Bartlett v. Kirwood*, 2 EL & BL 771; *Re Hammersmith Rent-charge*, 4 Exch. 87; *Kinning v. Buchanan*, 8 C. B. 271; *Kinning's case*, 10 Q. B. 730; *Hammond v. Bendyshe*, 13 Id. 869; *Ex parte Ramshay*, 18 Q. B. 173; 21 L. J., Q. B. 238; 16 Jur. 684; *Skingley v. Surridge*, 11 M. & W. 503; *R. v. Overseers of Warblington*, 22 L. T. 304; *Painter v. The Liverpool Gas Company*, 3 A. & E. 433; *R. v. Guardians of Totness Union*, 7 Q. B. 690; *Ex parte Story*, 12 C. B. 767; *Re Brook*, 16 C. B., N. S. 403; 33 L. J., C. P. 246.

(*y*) "The rule has been applied to cases other than those, which

are in the strictest sense judicial." Per *Erle*, C. J., in *Cooper v. Wandsworth Board of Works*, 14 C. B., N. S. 180; 32 L. J., C. P. 187.

(*z*) *Culverson v. Melton*, 12 A. & E. 753.

(*a*) 11 & 12 Vict. c. 43, s. 1; and see *Ex parte Monkleigh*, 17 L. J., M. C. 76, 79; 5 D. & L. 404, S. C. See *White v. Redfern*, 5 Q. B. D. 15; 49 L. J., M. C. 19, and *R. v. White*, 43 J. P., where it was held that the condemnation of unsound meat under the Public Health Act, 1875, s. 117, may be made *ex parte*, and without notice to the owner of the meat. See also *Waye v. Thompson*, 15 Q. B. D. 342; 54 L. J., M. C. 140.

Summons or
warrant.

Upon a sufficient information properly laid, and where there is no reasonable doubt of their jurisdiction, the magistrates are bound to hear and determine whether they should not issue a summons or warrant, and proceed to a hearing: and if they refuse to do so, they will be compelled by rule or *mandamus* (b).

If the information be for a penalty, or the non-payment of money, the magistrate should in general issue a summons in the first instance, before he grants a warrant, unless it is probable that the party will abscond as soon as he hears of the information, or the object of the prosecution will be otherwise defeated (c).

Justice
to issue
summons.

The summons (d) should be directed to the party against whom the charge is laid; and should be under the hand and seal of the justice himself by whom it is issued (e).

Lord Coleridge in giving judgment in *Dixon v. Wells* (f), said "It has been said that it has become a general practice for the magistrate's clerk to hear complaints without any written or other information, fill up a form of summons, obtain the signature of any magistrate, and so cause a man to be summoned and perhaps exposed to a heavy penalty, although the magistrate signing the summons may not have ascertained whether there was a *prima facie* case against the person summoned. If it be, indeed, the practice to sign a summons without hearing an infor-

(b) *R. v. Benn*, 6 T. R. 198; 11 & 12 Vict. c. 44, s. 5. See *ante*, p. 87.

(c) *R. v. Martyr*, 13 East, 61; *R. v. JJ. Stafford*, 3 A. & E. 425.

(d) See form 2 in the schedule to Summary Jurisdiction Rules, 1886.

(e) 11 & 12 Vict. c. 43, s. 1; and see, before that statute, *R. v. Steventon*, 2 East, 365. It appeared that it had uniformly been the practice of the commissioners of the excise to issue summonses for the attendance of witnesses, with the name of the solicitor of the excise only, printed at the foot; and this was supported on the ground of invariable usage alone.

But Lord Kenyon, in that case, alluding to convictions by other magistrates, says, "As to justices, I will take for granted, that they always sign the summonses issued by them, as they have been used to do." *Id. ib.* As to the refusal of justices to issue a summons upon an information for an indictable offence, see *R. v. JJ. Tynemouth*, 1 Q. B. D. 201; 45 L. J., M. C. 46; 33 L. T. 840; *R. v. JJ. Durham*, 19 L. T. 396; *R. v. Byrde and others*, 60 L. J., M. C. 17; 63 L. T. 645.

(f) 25 Q. B. D. 241; 59 L. J., M. C. 116.

mation, and for one person to hear the information and another to sign the summons, a practice more loose or likely to lead to injustice, especially in matters relating to perishable articles which require to be dealt with quickly, I can hardly conceive. The practice seems to me to be in direct contravention of the provisions of Jervis's Act, s. 1, which says that 'in all cases' where a complaint shall be made to any justice, it shall be lawful for 'such justice' to issue his summons. Clearly the Act did not mean that one justice was to hear the complaint and another to sign the summons."

A form of summons was given in the schedule to 11 & 12 Form of
summons. Vict. c. 43 (g), and previously to that statute it was held, that where a particular form of notice was prescribed, it must be strictly pursued (h).

The intention of the summons being to afford the person accused the means of making his defence, it contains the substance of the charge, and fixes a day and place for his appearance; allowing a sufficient time for the attendance of himself and his witnesses (i). A summons to appear immediately upon the receipt thereof has been thought insufficient in one case (k). In another, an objection made to the summons, that it was to appear on the same day, was only removed by the fact of the defendant having actually appeared, and so waived any irregularity in the notice (l). It is equally necessary, that it should be to appear at a place certain: otherwise, the party commits no default by not appearing; and the magistrate cannot proceed in the defendant's absence upon a summons defective in these particulars without making himself liable to an information (m).

(g) See now form 2 in the schedule to Summary Jurisdiction Rules, 1886.

(h) *R. v. Croke*, Cowp. 30. See observations on this case, in *Taylor v. Clemson*, 11 Cl. & Finn. 650. In stating the offence in the summons, the nearer the exact words of the

statute are followed the better; *Ex parte Perham*, 29 L. J., M. C. 33.

(i) 11 & 12 Vict. c. 43, s. 1; *R. v. Johnson*, 1 Str. 261.

(k) *R. v. Mallison*, 2 Burr. 681.

(l) *R. v. Johnson*, 1 Str. 44.

(m) *R. v. Simpson*, 1 Str. 44.

The summons should require the party to appear before the same justice or justices who received the information, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place, as shall then be there, to answer to the said information, and to be further dealt with according to law (*m*).

Offences in summons should be followed in the conviction.

If a summons issue for an offence under one statute and the conviction proceed upon another, the effect being different, this is an excess of jurisdiction for which the conviction may be quashed (*n*).

When issued.

If the application for the summons be made within the time limited by statute for that purpose, it is sufficient, although the issuing of the summons may be suspended for a time by the magistrate. Therefore, although the application by the mother of a bastard child for a summons against the alleged father must be made within twelve months from the birth of the child, it is not necessary that the summons should thereupon immediately issue, if the justice thinks it would be useless, in consequence of the applicant not knowing the residence of the father, or the like (*o*).

Service of the summons.

It was formerly a question, whether the service of the summons should be *personal*. It was thought in general necessary that it should be so, unless where personal service was expressly dispensed with by statute. Lord C. J. *Parker* was of that opinion (*p*), and the provisions specially introduced into many acts of parliament, to make a service at the dwelling-house sufficient, seemed to justify the inference, that the law in other cases required a service upon the person. But now by 11 & 12 Vict. c. 43,

(*m*) 11 & 12 Vict. c. 43, s. 1; and see ss. 2, 13.

(*n*) *Ante*, p. 73.

(*o*) *Potts v. Cumbridge*, 8 El. & Bl. 847; 27 L. J., M. C. 62. A second application for the summons after the twelve months in such case was held to be a mere continuation of the first applica-

tion, and therefore the summons issued thereon was decided to be free from objection. See *R. v. Pickford*, Ell. B. & S. 77; *ante*, p. 60.

(*p*) 10 Mod. 345; and see *R. v. Hall*, 6 D. & R. 84; 3 D. & R. Mag. Ca. 19.

s. 1, service in all cases may be effected by delivering the summons to the party personally, or by leaving the same with some person for him at his last (*q*) or most usual place of abode. In these and the like cases leaving a *copy* at the house is sufficient (*r*), and the delivery may be to a person on the premises, apparently residing there as a servant (*s*). If, however, the service is under a statute limited in its operation to England and Wales, it must be made within their territorial limits; thus, an order in bastardy having proceeded on a summons, which had been served on the putative father in Scotland, was quashed on the ground that it had been made without jurisdiction (*t*). But now any bastardy order of a Court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court (*u*).

(*q*) Which means, present place of abode, if the party has any, and the last which he had, if he has ceased to have any; *Ex parte Rice Jones*, 1 L. M. & P. 357; 19 L. J., M. C. 151, S. C.; and see *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116; *R. v. Farmer*, [1892], 1 Q. B. 637. Place of business is in general a place of abode within statutes providing for service of notices, &c. *Mason v. Bibby*, 33 L. J., M. C. 105; *Flower v. Allen*, 2 H. & C. 688; 33 L. J., Exch. 83. Service of any summons under the Mail Ships Act, 1891, is to be good service if made by leaving the summons for the person to be served on board the ship to which he belongs with the person being or appearing to be master of the ship; 54 & 55 Vict. c. 31, s. 7. Service of any summons, &c., under the Sea Fisheries Act, 1883, is to be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any sea-fishing boat to which

he may belong, with the person being or appearing to be in command or charge of such boat; 46 & 47 Vict. c. 22, s. 19. Any summons, order, or document may be served on a joint-stock company by leaving it, or sending it by post prepaid, addressed to the Company at their registered address; 25 & 26 Vict. c. 89, s. 62. As to service on a railway or on a company under the Companies Clauses Act, see 8 & 9 Vict. c. 16, s. 135; 8 & 9 Vict. c. 20, s. 138.

(*r*) *R. v. Chandler*, 14 East, 267.

(*s*) *Id. ib.* In *R. v. Smith*, L. R., 10 Q. B. 604; 33 L. T. 394, Quain, J., said, "If the service be otherwise than personal the nature of the summons must be explained to the person with whom it is left."

(*t*) *R. v. Lightfoot*, 6 E. & B. 822; 25 L. J., M. C. 115.

(*u*) 44 & 45 Vict. c. 24, s. 6. This Act does not enable a bastardy summons to be issued by justices in England and served in

The summons may be served by a constable, peace officer or other person to whom it has been delivered (x). The service, where no time is limited by the particular statute, should be made a reasonable time before the period appointed therein for appearance (y). In a case (z), where the defendant was a fisherman, and went to sea in pursuit of his calling on the 9th of March, and on the same day a summons for an assault was taken out against him, requiring him to appear to answer the charge upon the 12th. On that day, it having been proved that a summons was served on the defendant on the 10th, by leaving it with his mother at his usual place of abode, the justices convicted him in his absence. Upon the 9th of April he returned from sea, and was arrested under the conviction. The Court held that there was no evidence before the justices that a reasonable time had elapsed between the time of the service of the summons and the day for hearing the summons, and the justices had therefore no jurisdiction to convict; *Cockburn*, C. J., said:—"To convict an accused person unheard is a dangerous exercise of power, there being an alternative mode of procedure by issuing a warrant to apprehend him. Justices ought to be very cautious how they proceed in the absence of a defendant, unless they have strong grounds for believing that the summons has reached him, and that he is wilfully disobeying it."

A summons issued by a justice in one jurisdiction may be legally sent to and served by the police in another

Scotland upon the putative father domiciled and resident in Scotland; and if a summons is so served and the putative father does not appear before the justices, they have no jurisdiction to make a bastardy order against him: *Berkley v. Thompson*, 10 App. Cas. 45; 54 L. J., M. C. 57; 52 L. T. 1.

(x) 11 & 12 Vict. c. 43, s. 1.

(y) *Id.* ss. 2, 13; s. 10 of the "Sale of Food and Drugs Amendment Act, 1879" (42 & 43 Vict. c.

30) requires that summonses for the offences there referred to shall not be made returnable in a less time than seven days from the day of service. A summons under the Act is to be served within a reasonable time, and in case of a perishable article not exceeding 28 days from the time of purchase.

(z) *R. v. Smith*, L. R., 10 Q. B. 604.

jurisdiction, and a declaration of the service in such jurisdiction be sent to and received by the first jurisdiction in which the summons was issued, and will be legal evidence in the court of that jurisdiction (*a*).

Upon being indorsed by a court of summary jurisdiction in Scotland the summons may be served in Scotland (*b*).

The sufficiency of the service is generally a question for the justices to decide (*c*), and the Court will not interfere with their decision, unless it clearly appear that there Question of due service, one for the justice.

was in fact no service (*d*), or that the defendant was not allowed the interval fixed by the particular statute between the service and the time limited for appearance (*e*), or that the justices have mistaken the law as to the kind of service required, and have, therefore, declined to entertain the matter (*f*).

The foregoing rules, however, it should be observed, Effect of appearance. apply only to those cases where the defendant does not in fact appear: for, if he actually appears and pleads, there is no longer any question upon the sufficiency or regularity of the summons or its service (*g*).

(*a*) 42 & 43 Vict. c. 49, s. 41.

(*b*) 44 & 45 Vict. c. 24, s. 4.

(*c*) In *Re Williams*, 21 L. J., M. C. 46, Erle, J., said, as a general rule, service at nine o'clock in the morning of one day to appear at eleven in the morning of the next day was a reasonable service; and see *Ex parte Hopwood*, 15 Q. B. 121; *Zohrab v. Smith*, 5 D. & L. 635; *Robinson v. Lenaghan*, *Id.* 713; 2 Exch. 333, S. C.; *Ex parte Davies*, 17 Jur. 577; and also 11 & 12 Vict. c. 43, s. 2. Effect of serving summons on wrong person; *Kelly v. Lawrence*, 3 H. & C. 1; 33 L. J., Exch. 197.

(*d*) *Ex parte Rice Jones*, 1 L. M. & P. 357; 19 L. J., M. C. 151, S. C., where it was held by Mr. Justice Coleridge, that, although by 7 & 8 Vict. c. 101, s. 3, the justices had jurisdiction to make an

order of affiliation "on proof that the summons had been duly served," yet, if it was afterwards shown, in point of fact, that the summons was not served, a *certiorari* might issue to bring up the order for the purpose of its being quashed. See also *R. v. Totness*, 7 Q. B. 690.

(*e*) *Mitchell v. Foster*, 12 A. & E. 472.

(*f*) *R. v. Goodrich and others*, 19 L. J., Q. B. 415; 14 Jur. 914, S. C.; and see *Mason v. Bibby*, 33 L. J., M. C. 105, 106.

(*g*) 1 Str. 261; *Taylor v. Clemson*, 11 Cl. & Fin. 610, 642; *R. v. Preston*, 12 Q. B. 825; *Ex parte Rice Jones*, *supra*; *R. v. Ward*, 3 Cox, C. C. 279; *R. v. Clark*, 6 Q. B. 349; *R. v. Whittles*, 13 Q. B. 248; *R. v. Shaw*, 84 L. J., M. C. 169; 13 W. R. 692; *post*, pp. 104, 107, and see 11 & 12 Vict. c. 43,

Proof of service.

In a proceeding within the jurisdiction of a court of summary jurisdiction service of any summons, notice, process, or document, and the handwriting and seal of any justice or other officer or person may be proved by declaration (*h*).

Avoidance by death, &c.

A summons is not avoided by reason of the justice who signed the same dying or ceasing to hold office (*i*). Criminal proceedings do not lapse by the death of the informant (*k*).

Summons not recited in the conviction.

Formerly it was necessary that the fact of the party having been summoned should be stated upon the conviction, unless he had appeared without any summons, although a different rule prevailed with regard to proceedings classed under the denomination of orders. In the latter case, if the justices had jurisdiction, the fact of the defendant having been summoned was presumed, unless the contrary appeared (*l*). The summons is not now mentioned in the conviction, and no objection can be taken to the summons for any defect in substance or in form, or for any variance between it and the evidence adduced at the hearing; but if such variance appears to the justices to have deceived or misled the defendant, the hearing may be adjourned (*m*).

Not open to objection.

Variance.

Withdrawal of summons.

Where an information had been laid for an assault and a summons thereon had been served on the defendant, but before the day of hearing the informant gave the defendant notice that the summons was withdrawn, it was held that the magistrates were justified in dismissing the in-

s. 13. Where what is assumed to be done is a nullity there is nothing that can be waived, but where there is an irregularity it can be waived; *Boyle v. Sacher*, 39 Ch. D. 249; *Fry v. Moore*, 23 Q. B. D. 395; *Whiffen v. J.J. Malling*, [1892], 1 Q. B. 362.

(*h*) 42 & 43 Vict. c. 49, s. 41, *post*, Appendix.

(*i*) 42 & 43 Vict. c. 49, s. 37.

(*k*) *R. v. Truelove*, 5 Q. B. D.

336; 49 L. J., M. C. 57.

(*l*) *R. v. Venables*, 2 Ld. Raym. 1405; 8 Mod. 378; 1 Str. 640; Sess. Cas. 210; and see *R. v. Allington*, 1 Str. 678; *R. v. Austin*, 8 Mod. 309.

(*m*) 11 & 12 Vict. c. 43, s. 1. The cases in which a warrant may issue to enforce an order duly made against a defendant, without further notice or summons, are collected *ante*, p. 21, n. (*m*).

formation and granting to the defendant a certificate of dismissal under 9 Geo. 4, c. 31 (*n*). Where two informations were laid against a defendant, one for the rescue of a person arrested by a police officer, and the other for an assault committed on the police officer in making the rescue, the withdrawal of the information for the rescue was held not to operate as a withdrawal of the one for the assault (*o*).

SECT. 4.—*Of the Apprehension, Appearance, or Default.*

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|--|-----|---|-----|
| 1. <i>Apprehension of Offender to answer</i> | 101 | 6. <i>Adjournment on account of Variance</i> | 106 |
| 2. <i>What a sufficient Appearance</i> | 104 | 7. <i>Recognizance</i> | 106 |
| 3. <i>Form of Warrant</i> | 104 | 8. <i>Protection of Justice issuing the Warrant</i> | 106 |
| 4. <i>Warrant, where and how executed</i> | 105 | 9. <i>Proceedings ex parte</i> | 107 |
| 5. <i>Not open to Objection</i> | 106 | 10. <i>Waiver of irregular procedure</i> | 107 |

For offences merely arising by penal statutes, and not connected with any breach of the peace, a justice had no authority, as necessarily incident to the cognizance of the offence, to apprehend the accused in the first instance (*p*), or even after a summons and default, but could only summon him to attend, and in default of his appearance proceed *ex parte*. In some cases, however, suspected offenders might and still may be apprehended and brought before a magistrate without warrant or previous summons (*q*). Thus by 24 & 25 Vict. c. 96 (the Criminal Law

Apprehension of offender to answer.

Arrest without warrant.

(*n*) Now 24 & 25 Vict. c. 95; *Vaughton v. Bradshaw*, 9 C. B., N. S. 103; 30 L. J., C. P. 98. The dismissal under such circumstances was also held to be "a hearing" of the case, so as to render the certificate a bar to an action for the assault. See also *R. v. Church-Knowle*, 7 A. & E. 479; and *R. v. Stamper*, 1 Q. B. 119.

(*o*) *Galliard v. Saxton*, 2 B. & S. 363; 31 L. J., M. C. 123.

(*p*) The power to issue a warrant in the first instance applies only to cases punishable on conviction, and not to proceedings for an order, 11 & 12 Vict. c. 43, s. 2.

(*q*) See *Gelan v. Hall*, 2 H. & N. 379; 27 L. J., M. C. 78. A constable may arrest without warrant and take before a justice any person whom he finds committing an offence against the byelaws of the London County Council, relating to particular nuisances and who

Consolidation Act), s. 103, any person found (*r*) committing any offence punishable on indictment or on summary conviction by virtue of that act (except the offence of angling in the day-time) may be immediately apprehended without a warrant by any person and forthwith taken, together with such (*s*) property (if any), before some neighbouring justice to be dealt with according to law; and if any credible witness shall prove upon oath before a justice a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or in respect to which any offence punishable on summary conviction by virtue of that act shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to take before a justice the party offering the same together with such property, to be dealt with according to law (*t*). When an offender is arrested without a warrant he must be brought before a court within twenty-four hours, or, unless the case be of a serious nature, be admitted to bail (*u*). In a variety of cases, where there might be reason to suspect, from the nature of the offence, or the probable description of the offender, that the object of the prosecution would be defeated by giving him notice, the legislature had thought proper to arm the magistrate with

refuses to give his true name and address; 54 & 55 Vict. c. 76, s. 16. See also the Indecent Advertisement Act, 1889, and Prevention of Cruelty to Children Act, 1889.

(*r*) Meaning of "found committing an offence." See *Brown v. Turner*, 18 C. B., N. S. 485; 32 L. J., M. C. 107; *Horley v. Rogers*,

29 *Id.* 140.

(*s*) *Sic* in the statute. As to the granting of search warrants for stolen property, see 34 & 35 Vict. c. 112, s. 16.

(*t*) See also 24 & 25 Vict. c. 97, ss. 61, 62; and as to street musicians, see 27 & 28 Vict. c. 55.

(*u*) 42 & 43 Vict. c. 49, s. 38.

authority to issue a warrant immediately upon the information (*v*), and this may be done whenever the magistrate before whom the information is laid, thinks fit (*x*). In such cases the information is required to be substantiated upon oath or affirmation of the informant or of some witness or witnesses on his behalf before the warrant is issued (*y*). The oath should be administered in the presence of the magistrate (*z*). Some acts directed the magistrate to cause the defendant to be brought before him, which seemed to imply an authority to use compulsory process (*a*).

A warrant which is granted by a justice, on the certificate of the clerk of the peace, that an indictment has been found against a party for a misdemeanour, is regular and valid without any previous summons, being a ministerial act (*b*).

The magistrate, upon non-appearance of the party summoned, may issue a warrant for his apprehension, if it be proved by oath or affirmation that the summons was duly served a reasonable time before the time appointed for appearance, and if the matter of the information or

Non-appearance of defendant.

(*x*) As 42 Geo. 3, c. 119, s. 4, and many others.

(*z*) 11 & 12 Vict. c. 43, s. 2; and see 24 & 25 Vict. c. 96, s. 105. The provision contained 25 Geo. 2, c. 36, s. 6, that a warrant shall be issued for the arrest of a person accused, on notice given by two inhabitants to a constable under that act, of keeping a disorderly house, applies to a prosecution by summary proceedings, under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13, of a person accused of keeping a brothel, and therefore, in such a case, if an application for a warrant is made in accordance with 25 Geo. 2, c. 36, a magistrate is bound to grant a warrant. *R. v. Newton* [1892], 1 Q. B. 648.

(*y*) 11 & 12 Vict. c. 43, s. 10, and see sect. 2; *R. v. Kiddy*, 4 D. & R. 724; 2 D. & R. Mag. Cas. 364.

The proceedings by justices under the 11 Geo. 2, c. 19, in order to deliver to a landlord possession of premises vacated by his tenant, need not be founded upon a complaint on oath; *Basten v. Carrew*, 5 D. & R. 558; see *ante*, p. 83.

(*z*) *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Constable*, *Id.* 894, n. (*a*), in which cases a warrant of apprehension to answer a charge of assault having issued upon a deposition taken before the magistrate's clerk, the magistrate himself being absent, the latter was held liable to an action of trespass (see *R. v. Watts*, 33 L. J., M. C. 63. It was also held that the warrant should state on the face of it that the information was upon oath. See *R. v. Ternan*, 33 L. J., M. C. 201.

(*a*) As 19 Geo. 2, c. 21, s. 4.

(*b*) *R. v. Stokes*, 5 C. & P. 148; and see 11 & 12 Vict. c. 42, s. 3.

complaint be substantiated upon oath or affirmation to the satisfaction of the justice (c).

What is a
sufficient
appearance.

The appearance may be by the defendant personally or by his counsel or solicitor on his behalf (d). Upon non-appearance the hearing may be adjourned until the defendant is apprehended, and when he is apprehended he may be committed to prison under a warrant, or, if the justices think fit, verbally to the custody of the constable or other person who apprehended him, or to such other safe custody as they may deem fit; and he may be ordered to be brought up at a certain time and place before such justices as shall then be there, of which order the complainant or informant is to have due notice. If upon the day, and at the place so appointed, the defendant attend voluntarily in obedience to the summons, or be brought before the justices by virtue of any warrant, and the complainant or informant having had such notice, do not appear by himself, his counsel or solicitor, the justice or justices are to dismiss the complaint or information, unless for some reason they think proper to adjourn the hearing of the same unto some other day, upon such terms as they think fit, in which case they may commit the defendant to prison or discharge him on recognizance, with or without surety or sureties. If, however, both parties appear, either personally or by their counsel or solicitors, the justices must proceed to hear and determine the complaint or information (e).

Non-appearance of
informant or
complainant.

Form of
warrant.

The warrant for the apprehension of a defendant, that he may answer to an information or complaint, must be under the hands and seals of the justices by whom it is issued, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which it is to be executed, without naming

(c) 11 & 12 Vict. c. 43, ss. 2, 13. See *post*, p. 107, as to proceeding *ex parte*.

(d) *Id.* ss. 12, 13; and see *Bessell v. Wilson*, 1 El. & Bl. 489, 500; 22

L. J., M. C. c. 94, where it was held that a warrant ought not to be issued to compel appearance of defendant when he appears by his solicitor.

(e) 11 & 12 Vict. c. 43, s. 13.

him, or to such constable and all other constables within the county, &c., in which such justices have jurisdiction, or generally to all the constables in such last-mentioned county, &c. (*f*). After stating shortly the matter of the information or complaint on which it is founded, and that it has been substantiated upon oath (or proof upon oath has been given of disobedience to the summons) (*g*), it should order the person to whom it is directed to apprehend the defendant and bring him before the Court of Summary Jurisdiction, sitting at —, &c., to answer to the said information or complaint. It is not necessary that the warrant should be returnable at any particular time, but it remains in full force until executed (*h*).

The warrant may be executed by apprehending the defendant at any place within the county, &c., within which the justices issuing the same have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place within seven miles (*i*) of the border of such first-mentioned county, &c., without having the warrant backed; and in all cases where it is directed to all constables or peace officers within such county, &c., any constable, headborough, tithingman, borsholder, or other peace officer, for any parish, township, &c., situate within the limits of the jurisdiction for which the justices shall have acted when they granted the warrant, may execute it in like manner as if it had been directed specially to such constable by name and notwithstanding the place in which it is executed is not within the parish, &c. for which he shall be constable, &c. (*k*). The constable making the arrest ought to have the warrant with him, ready to be

Where
and how
executed.

(*f*) The forms of warrant under the act were addressed "To the constable of (G)." This direction does not include a county police constable (if there is such a person as the constable of G.), and he cannot execute a warrant so directed; *R. v. Saunders*, L. R., 1 C. C. R. 75; 36 L. J., M. C. 87. See now

note (*h*), *infra*.

(*g*) See *R. v. Ternan*, 33 L. J. M. C. 201, 209.

(*h*) 11 & 12 Vict. c. 43, s. 3. See form 6 in schedule of Summary Jurisdiction Rules, 1886, *post*, Appendix.

(*i*) *Ante*, p. 25.

(*k*) 11 & 12 Vict. c. 43, s. 3.

produced in case the defendant should require it to be shown to him. In the absence of the warrant the arrest would be illegal. And the defendant would be justified in resisting the illegal act of the constable when he endeavoured to arrest him (*l*).

Indorsement
of.

If the defendant is out of the jurisdiction of the justices issuing the warrant, it may still be executed upon being duly endorsed by a magistrate for the county, &c., where the defendant is (*m*).

Not open to
objection.

Warrants may be endorsed and executed in Scotland (*n*).

No objection can be taken to such warrant for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on behalf of the informant or complainant; but if such variance appear to the justices present and acting at the hearing to be such that the defendant has been thereby deceived or misled, they may adjourn the hearing to a future day, upon such terms as they think fit, and in the meantime may commit the defendant to prison, or discharge him upon his entering into a recognizance with or without surety or sureties conditioned for his appearance at the adjourned hearing (*o*).

Adjournment.

Committal.

Discharge.

Recognizance.

Where the defendant is thus discharged upon recognizance, and does not afterwards appear at the time and place therein mentioned, a court of summary jurisdiction may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance (*p*).

Protection
of justices
issuing the
warrant.

By 11 & 12 Vict. c. 44, s. 2, no action shall be brought for anything done under a warrant issued to procure the appearance of a party, and followed by a conviction or order in the same matter, until after the conviction or order has been quashed. If the warrant has not been

(*l*) *Galliard v. Laxton*, 31 L. J., M. C. 123; *Cod v. Cabe*, 1 Ex. D. 352; 45 L. J., M. C. 101.

(*m*) *Id.*; 11 & 12 Vict. c. 42, ss. 11–15; *ante*, p. 25 *et seq.*

(*n*) 44 & 45 Vict. c. 24, *post*, Appendix.

(*o*) 11 & 12 Vict. c. 43, s. 3.

(*p*) 42 & 43 Vict. c. 49, s. 9. See forms of recognizance, and endorsement of forfeiture of recognizance, Forms 36 & 37, in schedule of Summary Jurisdiction Rules, 1886.

followed by a conviction or order, yet if a summons were issued previously to such warrant, and was served personally, or by leaving the same for the party with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons (*q*), no action can be maintained against the justice for anything done under the warrant (*r*).

If it be proved upon oath or affirmation to the justices then present that the summons was duly served upon the party a reasonable time before the time appointed for his appearance, the justices may proceed *ex parte* to the hearing of the information or complaint, and may adjudicate thereon as fully as if the party had personally appeared before them in obedience to the summons (*s*). Proceedings
ex parte.

It was decided in *The Queen v. Hughes* (*t*), after being twice argued in the Court for Crown Cases Reserved, that where a charge is made in the presence of the accused, who is then and there called upon to answer it, it is immaterial, so far as the jurisdiction of the justice to hear that charge is concerned, whether the accused is before them voluntarily or otherwise, or on legal or illegal process. Waiver of
irregular
procedure.

In a recent case (*u*), Lord Coleridge, C. J., in commenting on the authorities cited for the above proposition, says, "First, in all the cases to which our attention has been called, there was no protest made by the person who

(*q*) The summons spoken of in this section is the summons to appear before, not after, conviction, and the appearance may be by counsel or solicitor; *Bessell v. Wilson*, 1 El. & Bl. 489.

(*r*) 11 & 12 Vict. c. 44, s. 2.

(*s*) 11 & 12 Vict. c. 43, ss. 2, 13, 16; 24 & 25 Vict. c. 96, s. 105, *ante*, p. 93.

(*t*) 4 Q. B. D. 614; 48 L. J., M. C. 151. In that case a warrant was issued informally and without oath; the defendant having no

knowledge of the defect, made no objection to the hearing of the charge. The Queen's Bench Division held that the irregularity in the process of bringing the defendant before the summary jurisdiction court had no effect on the jurisdiction, and that the defendant and a person who committed perjury on the hearing were rightly convicted.

(*u*) *Dixon v. Wells*, 25 Q. B. D. 249; 59 L. J., M. C. 116.

appeared, and the Courts said, applying a well-known rule of law expounded centuries ago, that faults of procedure may generally be waived by the person affected by them. They are mere irregularities, and if one who may insist on them waives them, submits to the judge, and takes his trial, it is afterwards too late for him to question the jurisdiction which he might have questioned at the time. Although the fact of a protest ought to be a complete answer to the assumed jurisdiction, I cannot disguise from myself the fact that from the language of many of the judges in *The Queen v. Hughes*—although, perhaps, not necessary for the decision of the case—and the judgments of *Erle*, C. J., and *Blackburn*, J., in *The Queen v. Shaw* (34 L. J., M. C. 169), they seem to assume that if the two conditions precedent of the presence of the accused and jurisdiction over the offence were fulfilled, his protest would be of no avail. It would have been easy to say that a protest would have made a difference; but I find no such qualification in *The Queen v. Hughes*, although something like that is said in one of the cases. It is an important question well worth consideration in the Court of Appeal.”

The non-attendance, however, of the party does not authorize a judgment without a due examination of the facts upon oath, with the same formality as if he were present and made defence (x).

(x) *Semble*, 10 Mod. 881; and see 11 & 12 Vict. c. 43, ss. 2, 13, 16. It appears to be doubtful whether it is competent to justices to convict upon a plea of guilty by a solicitor in the absence of the defendant; *R. v. Aves*, 24 L. T. 64. A justice has power, under sect. 81 of the Vaccination Act,

1867, to make an order for the vaccination of a child, though it has never been produced by the parent or person summoned to appear before him; *Dutton v. Atkins*, L. R., 6 Q. B. 873; 40 L. J., M. C. 157; *R. v. JJ. Cinque Ports*, 17 Q. B. D. 191; 55 L. J., M. C. 156.

SECT. 5.—*Proceedings after Appearance.*

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|--|-----|-------------------------------------|-----|
| 1. <i>Waiving objection to Summons</i> | 109 | 6. <i>Defendant requiring Time.</i> | 112 |
| 2. <i>The hearing, by whom</i> | 110 | 7. <i>Adjournment and Remand.</i> | 113 |
| 3. <i>Constitution of Court</i> | 110 | 8. <i>Confession</i> | 114 |
| 4. <i>Proceedings to be public</i> | 111 | 9. <i>Denial of Charge.</i> | 117 |
| 5. <i>Right to act as Advocate</i> | 111 | 10. <i>Joint Trial</i> | 117 |
| | | 11. <i>Trial by Jury</i> | 118 |

If the defendant appears, any irregularity in the summons, or even the want of a summons altogether, becomes immaterial “unless the statute creating the offence imposes the necessity of some such step(y). Where a defendant, having appeared in answer to a summons before justices, during the hearing of the case forcibly leaves the Court, the justice may adjourn, and at the adjourned sitting of the Court, if the defendant does not appear, may in his absence convict him of the offence with the commission of which he was charged(z). But a defendant who has been summoned from without the jurisdiction of the justices, for an offence that has taken place also out of their jurisdiction, does not by his appearance on the summons cure the defect of want of jurisdiction(a). The objection that a condition precedent to the issuing of the summons has not been performed should, at all events in proceedings of a civil nature such as bastardy, be taken before the merits of the case are entered upon, otherwise the objection will be waived(b).

(y) *R. v. Shaw*, 34 L. J., M. C. 169; *R. v. Johnson*, 1 Str. 261; *R. v. Barret*, 1 Salk. 383; 2 Salk. 428; *R. v. Aiken*, 3 Burr. 1786; *R. v. Stone*, 1 East, 649; *vide ante*, p. 107.

(z) *R. v. JJ. Carrick-on-Suir*, 16 Cox, C. C. 571.

(a) *Johnson v. Colam*, L. R., 10 Q. B. 544; 44 L. J., M. C. 185; 32 L. T. 725.

(b) *R. v. Berry*, 1 Bell, C. C. 46; 28 L. J., M. C. 86, *diss. Martin*, B.; *R. v. Fletcher*, L. R., 1 C. C. R. 320; 40 L. J., M. C. 123; *R. v. Simmons*, 1 Bell, C. C. 168; 28 L. J., M. C. 183, and see *R. v.*

Stoddard, 1 G. & D. 654; *R. v. JJ. Carnarvon*, 5 Nev. & M. 364; *R. v. Stone*, 1 East, 639; *R. v. JJ. Wilts*, 12 A. & E. 793; *contra* it seems if the proceedings are of a criminal nature, *R. v. Scotton*, 5 Q. B. 493; 13 L. J., M. C. 58; *R. v. Berry*, *supra*; but where prisoners were arrested on a charge of felony under sect. 10 of 24 & 25 Vict. c. 97, and the charge before the magistrates was one of misdemeanour under sect. 52 of the same statute without a fresh information, an objection on this ground after the merits had been gone into was held

The hearing,
by whom.

The complaint or information must be heard and determined by one or two or more justices, as may be directed by the act of parliament on which it is framed, or such other act as there may be in that behalf (c). But any case arising under any act passed after the Summary Jurisdiction Act, 1879, which is triable by a Court of summary jurisdiction, is, unless it is otherwise prescribed, to be heard, tried, determined and adjudged by a Court of summary jurisdiction consisting of two or more justices (d).

Place of
hearing.

All cases must be heard, tried, determined and adjudged at a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such court-house or place, or at an occasional court-house (e). But justices when sitting in an occasional court-house, or a justice when sitting alone, cannot impose more than fourteen days' imprisonment or order payment of more than twenty shillings.

Court of
Summary
Jurisdiction.

A Court of summary jurisdiction means any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is authorized to act under the Summary Jurisdiction Acts, whether acting under such acts, or under any other act, or by virtue of his commission, or by virtue of the common law (f).

Constitution
of Court.

A Court of summary jurisdiction consists of two or more justices sitting in a petty sessional court-house (g). A case arising under any act, whether past or future, is not to be

to be too late ; *Turner and another v. Postmaster-General*, 34 L. J., M. C. 10 ; *R. v. Smith*, L. R., 1 C. C. R. 110 ; 37 L. J., M. C. 6 ; *Wakefield Local Board v. West Riding, &c., Ry. Co.*, L. R., 1 Q. B. 84 ; 35 L. J., M. C. 89 ; 6 B. & S. 794.

(c) 11 & 12 Vict. c. 43, s. 12.

(d) 42 & 43 Vict. c. 49, s. 20, sub-s. 9.

(e) 42 & 43 Vict. c. 49, s. 20.

(f) 52 & 53 Vict. c. 63, s. 13.

Under this section justices sitting to hear an application for the issue

of a distress warrant for the non-payment of poor-rates are not necessarily exercising a ministerial duty, but are authorized to inquire into the validity of the objections taken by the party summoned, and to state a case for the opinion of the High Court. *Fourth City Building Society v. Churchwardens East Ham* [1892], 1 Q. B. 661 ; and see *R. v. J.J. Glamorganshire* [1892], 1 Q. B. 621.

(g) 52 & 53 Vict. c. 63, s. 13.

heard, tried, determined, or adjudged by a Court of summary jurisdiction except when sitting in open Court (*h*).

“Open Court” means a petty sessional court-house or an occasional court-house (*i*). “Open Court.”

An “occasional court-house” means such police-station or other place as is appointed to be used as an occasional court-house (*k*). “Occasional Court-house.”

Where justices are exercising a *judicial* authority, as in hearing and determining a case on summary conviction, their proceedings ought not to be private, and they are therefore not warranted in removing a person from the place where they are exercising such authority, unless he interrupts their proceedings (*l*). Proceedings not to be private.

The place in which they sit to hear and try the information or complaint is to be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them (*m*).

Formerly no person had a right to act as an advocate before justices, or take part in the proceedings, without their permission (*n*); but now each party may have his case conducted, and the witnesses examined and cross-examined by counsel or solicitor on his behalf (*o*). The As to right to act as an advocate.

(*h*) 42 & 43 Vict. c. 49, s. 20.

(*i*) 42 & 43 Vict. c. 59, s. 20.

(*k*) *Ibid.*

(*l*) *Daubney v. Cooper*, 10 B. & C. 237; and see *R. v. JJ. Staffordsh.*, 1 Chit. Rep. 217. But where a magistrate is acting merely in a *ministerial* capacity, as inquiring into a charge of felony previous to a committal of the party for trial, the magistrate has a discretion as to who shall or shall not be present at the examination, for it may be essential to the ends of public justice, and more especially to prevent any accomplices from escaping, that the examination should be private, and not interrupted by the interference of any person on the part of the prisoner; *Cox v. Coleridge*, 1 B. & C. 37; 2 D. & R. 86; *R. v. Borron*, 3 B. & Ald. 432; 11 & 12

Vict. c. 42, s. 19, see *ante*, p. 21, n. (*m*). It is usual, on request of either party, to order witnesses out of court, but even if they disobey the order, their evidence must still, if tendered, be received; *Chandler v. Horne*, 2 M. & R. 423.

(*m*) 11 & 12 Vict. c. 43, s. 12.

(*n*) *Collier v. Hicks*, 2 B. & Ad. 663.

(*o*) 11 & 12 Vict. c. 43, s. 12; see *Bessell v. Wilson*, 1 El. & Bl. 489. A party may conduct his own case as an advocate without waiving his right to give evidence as a witness; *Cobbett v. Hudson*, 1 El. & Bl. 11, and see “Best on Evidence,” p. 191 (7th ed.). No person may act as a solicitor in a court of summary jurisdiction, unless he is enrolled; and otherwise duly qualified: 6 & 7 Vict. c. 73, s. 2; the

Defendant
requiring
time for his
defence.

informant, although an officer of a society, is entitled to conduct his own case and examine and cross-examine witnesses (*p*), and the defendant may act as his own advocate, and when competent give evidence himself (*q*).

Upon the defendant's appearance, the substance of the information is stated to him, and he is asked if he has any cause to show why he should not be convicted (*r*), or why an order should not be made against him, and thereupon he either prays time, or confesses the charge, or denies it, and makes defence immediately. In the first case, if he pleads not guilty, and requires time for his defence, and to produce his evidence, it is reasonable, and the law seems to require that the party should be allowed a proper interval for that purpose. Though no express adjudication has occurred to determine this point, it may be inferred from the language of the Court of Queen's Bench in those cases where a question has arisen upon the effect of the defendant's appearance. Thus, in over-ruling the objection to the want of a previous summons, the Court, in the case of *The Queen v. Aikin* (*s*), laid great stress upon the

Law List is *prima facie* evidence that the person holds a certificate for the current year; 23 & 24 Vict. c. 127, s. 22. But clerks to boards of guardians may do so; 7 & 8 Vict. c. 101, s. 68; 23 & 24 Vict. c. 127, s. 33. Justices have no discretion to prohibit the solicitor of the prisoners from cross-examining the witnesses for the prosecution, and the right to cross-examine is absolute both under the Summary Jurisdiction Acts, and by the common law, *R. v. Griffiths*, 54 L. T. 280. The defendant has no right to have the case adjourned for the attendance of a solicitor to defend him. *R. v. JJ. Cambridgeshire*, 44 J. P. 168; *R. v. Biggins*, 5 L. T. 605. Any officer or person employed or authorized by the commissioners or the solicitor of inland revenue in that behalf may, although he is not a solicitor, advocate, or writer to the signet, prosecute, conduct, or de-

fend any information, complaint, or other proceeding to be heard or determined by any justice of the peace in the United Kingdom or by any sheriff in Scotland, where the proceeding relates to inland revenue or to any fine, penalty, or other matter under the care and management of the commissioners; 53 & 54 Vict. c. 21, s. 27.

(*p*) *Duncan v. Toms*, 56 L. J., M. C. 81; 56 L. T. 719.

(*q*) *Cobbett v. Hudson*, 22 L. J., Q. B. 11; 1 E. & B. 11. If a party conducts his own case and examines witnesses, counsel may not argue points of law on his behalf. *Moscato v. Lawson*, 1 M. & R. 454; *Newton v. Chaplin*, 19 L. J., C. P. 374.

(*r*) 11 & 12 Vict. c. 43, s. 14.

(*s*) 3 Burr. 1786; see per *Crompton*, J. in *Turner and another v. Postmaster-General*, 34 L. J., M. C. 13.

fact, that the defendant, on his appearance, *did not desire further time* to prove his innocence or produce his witnesses. And, upon a later occasion, in which Lord *Kenyon* pronounced a decision to the like effect, his words were, "justice requires that a party should be duly summoned and fully heard; but if he be stated to be present at the time of the proceeding, and to have heard all the witnesses, and not to have *asked for any further time* to bring forward his defence, if he had any, this has at all times been deemed sufficient" (t). But a refusal to adjourn the case for the purpose of the defendant obtaining legal assistance does not go to the jurisdiction of the magistrate, so as to enable the defendant to quash the conviction on *certiorari* for this cause (u).

The hearing may, either upon the application of the defendant, or for any other cause, be adjourned to a subsequent day (x), taking care not to exceed the time, if any be limited by the act, for *making the conviction* (y). But if the limitation refers only to the time within which the offence must be prosecuted (as in 29 Car. 2, c. 7, and many other acts), and not (as in the former Game Acts, 22 & 23 Car. 2, c. 25; 5 Ann. c. 14) to the time of making the conviction, then, provided the information has been laid in due time, the hearing and subsequent proceedings to judgment will be valid, though postponed to a term beyond the period mentioned in the act (z).

The adjournment may be made before or during the hearing, and may be ordered by any one justice or by the justices present, in their discretion (a). The time and place to which the hearing is adjourned should be ap-

(t) *R. v. Stone*, 1 East, 639; *R. v. Clarke*, 6 Q. B. 349.

(u) *R. v. Biggins*, 5 L. T. 605.

(x) 11 & 12 Vict. c. 43, s. 16. A magistrate cannot judically consider, as ground for adjourning a summons for libel, pending civil proceedings between different parties for a different libel, though arising

out of the same matters. *R. v. Evans*, 62 L. T. 570.

(y) *R. v. Tolley*, 3 East, 467; see *Davis v. Capper*, 10 B. & C. 28; *R. v. Bellamy*, 2 Dowl. & R. 727; 1 D. & R. Mag. Ca. 376; 1 B. & C. 500; and *ante*, p. 62.

(z) *R. v. Barrett*, 1 Salk. 383.

(a) 11 & 12 Vict. c. 43, s. 16.

pointed at the time of the adjournment, and stated in the presence and hearing of the party or parties, or their solicitors or agents, then present. In the meantime the defendant may be allowed to go at large, or may be discharged upon entering into a recognizance, with or without surety or sureties, conditioned for his appearance, or may be committed for safe custody (b). Where a statute required justices to proceed immediately to conviction or acquittal, and did not in express terms authorize the remand of the defendant, it was yet held that the magistrate had power, under 11 & 12 Vict. c. 43, s. 16, to adjourn the case, and to issue a warrant for his committal to the house of correction for safe custody (c).

If at the time or place to which such hearing or further hearing has been adjourned, either or both of the parties do not appear personally or by their counsel or solicitors, the justices may proceed to such hearing or further hearing as if the parties were present; or if the prosecutor does not appear, the information may be dismissed with or without costs, as the justices may think fit (d).

Confession.

If the charge be *confessed*, nothing more remains for the magistrate but to pass judgment, and impose the penalty. It has been determined, that though a statute only empowered the justice to convict upon the oath of one or more witnesses, this implied a power to convict upon the confession of the party alone (e). Even if that decision had not occurred to determine the law upon this point, it seemed scarcely to admit of much doubt, except what might arise from the express mention made in several acts

(b) 11 & 12 Vict. c. 43, s. 16.

(c) *Gelen v. Hall*, 2 H. & N. 379; 27 L. J., M. C. 78.

(d) 11 & 12 Vict. c. 43, s. 16.

(e) *R. v. Gage*, 1 Str. 546. In this case, however, which was upon 5 Ann. c. 14, for using a greyhound, Mr. J. *Eyre* dissented, because the statute 22 & 23 Car. 2, c. 26, gave power to convict upon confession for the same offence, and therefore,

he thought there existed no necessity for carrying the act 5 Ann. c. 14, so far. The practice was afterwards established agreeably to that decision, and met with no objection or controversy. See also Dalt. c. 7, s. 2; *Allen v. Sparkhall*, 1 B. & A. 100; *R. v. Turner*, 4 B. & A. 510; *Dean v. King*, *Id.* 517; *R. v. Websdell*, 2 B. & C. 136.

of parliament of the voluntary confession of the parties, and the distinct provision sometimes introduced that the voluntary confession should be sufficient to convict the party himself, as in the act 21 Jac. 1, c. 27,—a provision which seemed to argue a doubt whether the law would of itself supply that power. It is now expressly enacted, by 11 & 12 Vict. c. 43, s. 14, that if the defendant admit the truth of the information, and show no cause, or no sufficient cause, why he should not be convicted, the justices shall convict him (*f*). To be effectual, however, for that purpose, the confession should not only agree with the charge, but should contain an admission of such facts as amount to the complete offence complained of; for, as the following authorities show, the confession only admits the charge, but not the legal effect of it:—

In a conviction for trading as a hawker and pedlar without licence, on the former acts against that offence (3 & 4 Ann. c. 4; 9 & 10 Will. 3, c. 27, and 8 & 9 Will. 3, c. 25), the information stated, that the defendant was found offering for sale silk handkerchiefs, and trading as a hawker, pedlar, and petty chapman: and that he did then and there offer to sell a parcel of silk handkerchiefs, &c., without having a licence. After the appearance of the defendant, it was stated that, being asked for his defence, why he should not be convicted of the said offence so charged in form aforesaid, he freely confessed “that he, the said defendant, did offer to sell silk handkerchiefs to the said *T. P.* (the informer) in manner as is mentioned in the aforesaid information, and that he hath no licence.” The conviction was quashed for the insufficiency of the charge, a single act of trading not being deemed sufficient to constitute a hawker and pedlar within the act (*g*): and on it being insisted, that the confession of the defendant cured the defect, by admitting the offence, because, if he had a legal defence, he might have availed himself of it,

Admits only
the fact, not
the law.

(*f*) See also 42 & 43 Vict. c. 49,
s. 13.

(*g*) See the observations upon this
case, *post*, “Conviction.”

Lord *Mansfield* would not allow it to have that effect, observing, that the confession is only of the fact that he sold the handkerchiefs to *T. P.*, not that he traded as a hawker and pedlar (*h*).

But in another conviction upon the same statute it was alleged, that the defendant was apprehended for trading as a hawker and pedlar, and was charged upon oath before the justice with having sold a piece of muslin *as a hawker, pedlar and petty chapman*, which fact he confessed: this was held to be sufficient to warrant a conviction for not producing a licence on demand by the justice (*i*).

Confession
does not
extend the
charge.

The following case is in point to show that a confession cannot extend or help out the description of the offence, as charged in the information. The conviction, which was for killing fish, set forth, as the relation of the informer, that, on the day and place therein mentioned, the defendant did fish in a certain brook there named, and did then and there take and kill the fish, not having a just right or claim to take, kill or carry away any such fish, and the said stream being private property. It was also stated, that another witness, not alleged to be upon oath, came and informed that *R. H.* is the owner of the said stream. The defendant appearing, and being called upon for his defence, "of his own accord confessed all and singular the said premises to be true, in manner as the same are charged in the said information." This conviction was quashed, on the ground that the fact of the ownership, and of the owner's dissent, did not sufficiently appear. It was urged, in support of the conviction, that it was warranted by the confession of the whole charge; part of which was that *R. H.* was the owner: but the Court, as to that point, only took notice that as the ownership (or rather, it should be, the owner's dissent) is not sufficiently charged, neither is it confessed: the confession goes no further than the matters charged: the words in the conviction, "not having

(*h*) *R. v. Little*, 1 Burr. 613.

(*i*) *R. v. Smith*, 3 Burr. 1475.

any just right or claim," are the words of the informer only, and they are too general (*k*).

So, if a fact be penal only under certain circumstances, and those are omitted in the charge, the conviction is bad, notwithstanding it is stated that the defendant fully acknowledged the premises to be true as charged, and did not show any sufficient cause why he should not be convicted thereof (*l*). Nor will such an acknowledgment warrant a judgment upon a statute not applicable to the offence.

The confession would not now appear upon the face of the conviction, but the above cases show the nature of the confession which the justices should require before they convict upon that ground.

As the confession supplies the want of evidence, so it cures any objection to the manner of taking the depositions; such, for instance, as that they were not taken in the presence of the defendant (*m*).

If the defendant appears and denies the charge, or neglects to appear after being duly summoned, the next step is for the prosecutor or complainant to state his case, and to substantiate the information by testimony (*n*). For that purpose, the prosecutor or informer must produce his witnesses to prove the facts alleged. Denial of the charge.

Where there are several charges against several defendants, but the evidence against them all is the same, and they are all tried together and each is separately convicted, no objection having been raised at the time, the convictions cannot afterwards be objected to on this ground (*o*). Joint trial.

Where an information was laid against two defendants, charging them with an offence against the Game Act Right to call co-defendant as a witness.

(*k*) *R. v. Corden*, 4 Burr. 2279, 2282; see *R. v. Daman*, 2 B. & A. 378; *Wickes v. Clutterbuck*, 3 D. & R. Mag. Ca. 536; 10 J. B. Moore, 63; *R. v. Chaney*, 6 Dowl. 281, 289.

(*l*) *R. v. Clarke*, Cowp. 35.
(*m*) *R. v. Hall*, 1 T. R. 320; and see *Mann v. Davers*, 3 B. & Ald. 103.
(*n*) 11 & 12 Vict. c. 43, s. 14.
(*o*) *R. v. Biggins*, 5 L. T. 605.

(1 & 2 Will. 4, c. 32, s. 3), each claimed to be tried separately, in order to call the other as a witness; the justices refused, and heard the charge against both together, and convicted them, and a conviction was drawn up separately against each defendant, imposing a penalty of 3*l*. The Court of Queen's Bench held, that it was in the discretion of the justices whether they would hear the charge separately or not (*p*).

Trial by jury. A person charged with an offence in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may claim to be tried by a jury, whereupon the court of summary jurisdiction is to deal with the case in all respects as if the accused were charged with an indictable offence (*q*). The court is at the outset to inform the defendant of his right to be tried by a jury, and ask if he wishes to be so tried, in the manner directed by the Summary Jurisdiction Act, 1879. This provision does not apply to a child (under twelve years of age) unless its parent or guardian is present, when the question is to be addressed to such parent or guardian (*q*).

Majority of justices to decide.

Where more than one justice is present, the decision is that of the majority, and the chairman has no casting vote. If the justices are equally divided, there can be no adjudication, and the case may be again heard on a fresh information or complaint, or adjourned by the majority to the next sitting, when it can be reheard with the assistance of other justices.

(*p*) *R. v. Littlechild*, L. R., 6 Q. B. 293, 40 L. J., M. C. 137; *Paul v. Summerhayes*, 27 W. R. 215.

(*q*) 42 & 43 Vict. c. 49, s. 17. This section does not apply to a case where the offender is liable to further imprisonment for not find-

ing sureties after the expiration of three months' imprisonment under s. 1 of the Night Poaching Act, 9 Geo. 4, c. 69. *Williams v. Wynne*, 57 L. J., M. C. 30; 58 L. T. 283.

SECT. 6.—*Witnesses.*

1. *Compelling attendance of* 119
2. *Competency of* 120

The magistrate had, in general, no authority to compel the attendance of witnesses, for the purpose of a summary trial; unless where it was specially given by act of parliament. Compelling attendance of witnesses.

But every facility is now afforded for procuring their attendance by 11 & 12 Vict. c. 43, s. 7. If it is made to appear to any justice, by the oath or affirmation of any credible (*r*) person, that any one within his jurisdiction is likely to give material evidence in behalf of the prosecutor, complainant, or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing, such justice is required to issue his summons to such person under his hand and seal, requiring him to appear and to testify what he shall know concerning the matter of the said information or complaint. If the person so summoned neglect to appear, and no just excuse is offered for his neglect, a warrant may issue against him, after proof upon oath of the summons having been served upon him personally, or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf. The justice may also issue his warrant in the first instance, instead of a summons, if he is satisfied by evidence upon oath or affirmation that it is probable that the witness will not attend to give evidence without being compelled to do so.

If the witness appear in pursuance of the summons or warrant, and refuse to be examined upon oath or affirmation concerning the matter of the information or complaint, or refuse to take the oath or affirmation, or having taken Witness refusing to be examined, or take oath.

(*r*) *I. e.* "competent."

it refuse to answer such questions concerning the premises as shall then be put to him without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may (after proof on oath or affirmation of service of the summons, and of payment or tender of his reasonable expenses), by warrant commit him to prison for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises (s).

Witness out of jurisdiction.

The summons to a witness out of the jurisdiction of the court may be indorsed by a justice in another jurisdiction (t) or in Scotland (u), and there executed.

What witnesses admissible.

From the term generally used in penal statutes, directing the conviction to be upon the testimony of *credible* witnesses (x), it might be doubted, whether the magistrate should not be at liberty to examine any witness to whom he might think proper to give credit. But, according to the interpretation put upon the same term in the construction of the Statute of Frauds, 29 Car. 2, c. 3, s. 5, *credible* is equivalent to *competent*; and therefore such witnesses only can be properly received on a summary conviction as are capable of being examined in a Court of justice (y).

(s) 11 & 12 Vict. c. 43, s. 7. It seems to be doubtful whether witnesses attending voluntarily can be committed.

In a recent case under the Bastardy Acts, where power is given to commit any witness "coming or brought" before the court, it was held that the defendant who voluntarily gave evidence, not having been summoned as a witness, was properly committed for refusing to answer; and in that case Mr. Justice Hawkins, said that a person who comes voluntarily forward and gives evidence is in exactly the same position as one who has been summoned and ordered to appear. *R. v. Flarell*, 14 Q. B. D. 364; 52 L. T. 133. As to refusal to answer

on the ground that the answer might tend to criminate, see *Ex parte Reynolds*, 20 Ch. D. 294; 51 L. J., Ch. 756.

(t) 11 & 12 Vict. c. 43, s. 7; 42 & 43 Vict. c. 49, s. 36. One Justice may indorse the summons: 52 & 53 Vict. c. 63, s. 13; and he need not be sitting in open court. See forms 7 and 35, in schedule to Summary Jurisdiction Rules, 1886. Additional powers are given to metropolitan magistrates under 2 & 3 Vict. c. 71, s. 22.

(u) 44 & 45 Vict. c. 24.

(x) As in 24 & 25 Vict. c. 96, ss. 103—105.

(y) 1 Jarman on Wills, p. 70 (4th edit.).

The testimony of the informer is now admissible, whatever his interest may be in the result of the information, as witnesses are no longer excluded from giving evidence on the ground of interest (z), or on the ground of being parties to the proceedings named on the record (a). Informer.
6 & 7 Vict.
c. 85.

The complainant is a competent witness in all cases. The party charged with the offence, however, is not competent to give evidence either for or against himself in a criminal proceeding punishable on summary conviction (b). Various statutory exceptions have since been made (c). 14 & 15 Vict.
c. 99.
Parties.

Thus the stat. 14 & 15 Vict. c. 99, by the second section, renders admissible the testimony of parties to proceedings in Courts of justice ; but by the third section excepts persons "in any *criminal proceeding* (d), charged with the commission of any indictable offence, or any offence punishable on *summary conviction*." The husbands and wives of parties to the proceedings were also expressly excluded from the operation of this statute. But now by 16 & 17 Vict. c. 83, "on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in any Court of justice or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action, or other proceeding, may be brought or instituted, or opposed or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence on behalf of either or any of the parties to the said suit, action, or other proceeding ;" 16 & 17 Vict.
c. 83.
Husband and
wife of party.

(z) 6 & 7 Vict. c. 85.

(a) 14 & 15 Vict. c. 99, s. 2.

(b) It appears that, on a joint information, a co-defendant may be discharged from the information, and then give his evidence for or against the remaining defendant. See Taylor Ev. vol. 2, p. 1152 (8th edit.) ; see also *Robinson v. Robinson and Lane*, 1 S. & T. 362 ; 27 L. J., Div. 91 ; *R. v.*

Littlechild, *supra* ; *R. v. Payne*, L. R., 1 C. C. R. 349 ; 41 L. J., M. C. 65.

(c) See p. 122.

(d) The words "criminal proceeding" override both the exceptions, viz. offences punishable by indictment and on summary conviction ; *The Attorney-General v. Radloff*, 10 Exch. 84 ; 23 L. J., Exch. 240, S. C.

but this is not to render them competent for or against each other in any *criminal proceeding*, nor are they compellable to disclose any *communication* made by the one to the other during the marriage. A husband or wife, however, is a competent witness against the other at common law, when one is charged with an offence against the other (*e*); and were it not for this exception, the wife would be exposed without remedy to personal injury (*f*).

By various recent statutes the defendant and his wife or husband may give evidence on his or her behalf in summary proceedings under those statutes.

By the Licensing Act, 1872 (*g*), defendants and their wives are rendered competent witnesses in summary proceedings taken under that act. The Conspiracy and Protection of Property Act, 1875 (*h*), extends the competency to parties to the contract of service, and to their husbands and wives, on the trial of an *indictment or information* under that act.

Any person charged with an offence under the Public Health (London) Act, 1891, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case (*i*).

In an information by the Attorney-General for the penalty of 100*l.*, incurred by the defendant, under the Smuggling Act, 1845 (8 & 9 Vict. c. 87, s. 51), for unshipping tobacco liable to forfeiture, the question arose in the Court of Exchequer (*k*), whether the defendant was a

Defendant in a "criminal proceeding."

(*e*) Tayl. Ev. vol. 2, p. 1151, s. 1371 (7th edit.).

(*f*) The Married Women's Property Act, 1882, enacts that in any proceeding under sec. 12 of that act a husband and wife shall be competent to give evidence against each other.

(*g*) 35 & 36 Vict. c. 94, s. 51, sub-s. 4.

(*h*) 38 & 39 Vict. c. 86, s. 11.

(*i*) 54 & 55 Vict. c. 76, s. 118. See also Contagious Diseases

Animals Act, 1878 (41 & 42 Vict. c. 74); The Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58, s. 62); The Prevention of Cruelty to Children Act, 1889 (52 & 53 Vict. c. 44).

(*k*) *The Attorney-General v. Radloff*, *supra*; and see the numerous cases cited there; see also *Attorney-General v. Sillem* (*the Alexandra case*), 33 L. J., Exch. pp. 92, 101,

competent witness on his own behalf under 14 & 15 Vict. c. 99, and this, as it was agreed by the learned judges, depended upon another question, viz., whether it was “a criminal proceeding,” in which the defendant was “charged with the commission of an offence punishable on summary conviction.” *Pollock*, C.B., and *Parke*, B., held the testimony of the defendant to be inadmissible; *Platt*, B., and *Martin*, B., held it to be admissible. Mr. Baron *Parke* said—“An information by the Attorney-General for an offence against the revenue laws is a criminal proceeding—it is a proceeding instituted by the Crown for the punishment of a crime—it is a crime and an injury to the public to disobey statute revenue law; and accordingly the old form of proclamation made before the trial of information for such offences styles these offences misdemeanours.” Mr. Baron *Platt* rested his judgment upon the ground that the primary object of the information was to recover the pecuniary penalty, and not at once to affect the defendant personally by the imprisonment of his body.

Since the above decision it has been expressly enacted by 39 & 40 Vict. c. 36, s. 259, that where any proceedings under the Customs Acts are had in the Exchequer Division of the High Court of Justice on the revenue side, the defendant shall be competent and compellable to give evidence.

The same question had arisen as to what is “a criminal matter,” under the Habeas Corpus and other acts (*l*), and

In informations for penalties in the Exchequer, evidence as to character is inadmissible; *The Attorney-General v. Bowman*, 2 B. & P. 532, n. (a).

(*l*) *Ex parte Beeching*, 4 B. & C. 136; *Attorney-General v. Siddon*, 1 Cr. & Jer. 220—226, where *Bayley*, B., distinguishes between criminal and penal proceedings; *Huntley v. Luscombe*, 2 B. & P. 530; *Rackham v. Bluck*, 9 Q. B. 691; *Cobbett v. Slowman*, 9 Exch. 633; *Ex parte*

Eggington, 2 El. & Bl. 717. An application to a magistrate for a summons against a company to recover penalties for default in forwarding a list of its members to the Registrar of Joint Stock Companies as required by s. 26 of the Companies Act, 1862, is a criminal proceeding. *R. v. Tyler and International Commercial Co.* [1891] 2 Q. B. 588. See also *Ex parte Schofield*, [1891] 2 Q. B. 428; 60 L. J., M. C. 157.

the same test had been suggested on several of those occasions as that which was applied by Mr. Baron *Platt*, in the above case, namely, whether imprisonment would follow the conviction in the first instance, or whether a pecuniary penalty would be the proximate result.

The question, therefore, what is a "criminal proceeding," as the subject of summary conviction, depends on the manner in which the legislature have treated the cause of complaint, and for this purpose the scope and object of the statute, as well as the language of its particular enactments should be considered. It may be, as a general rule, that every proceeding before a magistrate, where he has power to *convict*, in contradistinction to his power of making an order, is a criminal proceeding, whether the magistrate be authorized, in the first instance, to direct payment of a sum of money as a penalty, or at once to adjudge the defendant to be imprisoned; and it must be borne in mind, that where a statute orders, enjoins, or prohibits an act, every disobedience is punishable at common law by indictment; in such cases, the addition of a penalty, to be recovered by summary conviction, can hardly prevent the proceeding in respect of the offence from being a criminal one (*m*).

There can be no doubt that the defendant is a competent witness in all matters before magistrates which result simply in *an order for the payment of money*.

SECT. 7.—*Of the Mode of Examination.*

Witness
examined in
presence of
the party.

Although no mode of examination is pointed out by the statutes giving jurisdiction over the offence; yet, as justice requires that the accused should be confronted with the witnesses against him, and have an opportunity of cross-examination, it is required by law, in the summary mode

[(*m*) See *R. v. JJ. Gloucestershire*, L. R., 4 Q. B. 285; 33 L. J., N. C. 73.

of trial now under consideration, that the evidence and depositions should be taken in the presence of the defendant, when he appears (*n*); for, though the legislature, by a summary mode of enquiry, intended to substitute a more expeditious process for the common law method of trial, it could not intend to dispense with the rules of justice, so far as they are compatible with the method adopted. Indeed, it may be useful upon this occasion to notice the general maxim which has been laid down as a guide to the conduct of magistrates in regulating all their summary proceedings, viz., that "*acts of parliament, in what they are silent, are best expounded according to the use and reason of the common law*" (*o*). Unless, therefore, the defendant forfeits this advantage by his wilful absence, he ought to be called upon to plead before any evidence is given (*p*); and the witnesses must be sworn and examined in his presence (*q*); or if the evidence has been taken down in his absence, and is read over to him afterwards, the witnesses must at the same time (unless the defendant upon hearing the evidence should confess the fact (*r*)), be re-sworn in his presence, and not merely called upon to assert the truth of their former testimony (*s*); for the intent of the rule is, that the witnesses should be subjected to the examination of the defendant upon their oaths (*t*).

The examination of witnesses must be upon oath or affirmation, and no legal conviction can be founded upon any testimony not so taken (*u*). There is a difference in the

(*n*) See 11 & 12 Vict. c. 43, ss. 12, 14.

(*o*) Per *Parker*, C.J., *R. v. Simpson*, 1 Str. 45.

(*p*) 1 T. R. 320. This course is now prescribed by stat. 11 & 12 Vict. c. 43, s. 14.

(*q*) *R. v. Vipont*, 2 Burr. 1163; *Fletcher v. Calthrop*, 6 Q. B. 880; 14 L. J., M. C. 49, 53, n. S. C.; *R. v. Totnes*, 7 Q. B. 690; *Re Tordoff*, 5 Q. B. 933, 939; *Ex parte Monkleigh*, 17 L. J., M. C. 78; *Coster v. Wilson*, 3 M. & W.

411; *Williams v. Wilcox*, 8 A. & E. 314.

(*r*) *R. v. Hall*, 1 T. R. 320.

(*s*) *R. v. Crowther*, 1 T. R. 125.

(*t*) 2 Burr. 1163.

(*u*) 11 & 12 Vict. c. 43, s. 15; and this was so before the statute; *R. v. Lewis*, 1 D. & L. 822; *Re Gray*, 2 Id. 539; *R. v. JJ. Bucks*, 14 L. J., M. C. 45. When a witness objects to take an oath, on the ground that he has no religious belief, or that the taking of an oath is contrary to his religious

manner in which particular acts are worded, in regard to the mode of examination to be pursued. For, while some acts expressly mention the testimony of witnesses *on oath*, others in general terms authorize the magistrate *to hear and determine*, or to convict or give judgment *on the examination of witnesses*, without noticing the oath. But such general expressions seem, in legal construction, necessarily to refer to the only kind of testimony known to the law, viz., that upon oath. "For," says *Dalton*, "in all cases wheresoever any man is authorized to examine witnesses, such examination shall be taken and construed to be as the law will, *i. e.*, upon oath" (x). This was the opinion of Lord C. J. *Broke* and Mr. *Lambert*; and the latter, adds the latter, because, in these cases of conviction by justices of the peace, the trial dependeth wholly upon these examinations (y). And even before the statute 11 & 12 Vict. c. 43, the practice always was to examine the witnesses upon oath.

The power of justices to administer an oath, by virtue of that jurisdiction which is conveyed in the authority to hear, examine, and convict, without any express mention of a power to administer an oath, does not seem, from anything now extant, to have been ever questioned, so as to be brought to a judicial decision. But, in order, as it should seem, to remove any scruples with regard to that point, the statute 15 Geo. 3, c. 39, was passed, which, reciting, "that it is frequently necessary for justices of the peace to administer oaths or affirmations, where penalties are to be levied, or distresses to be made, in pursuance of acts of parliament, which they have no power to administer, unless authorized so to do by such acts respectively," enacts, "that

belief, he may make a solemn affirmation to speak the truth. 51 & 52 Vict. c. 46, s. 1. The unsworn evidence of a child of tender years may be received in some cases. See s. 4 of Criminal Law Amendment Act, 1885; and s. 8 of Prevention of Cruelty to Children Act, 1889.

(x) Dalt. c. 6, s. 6.

(y) *Id.* c. 115, c. 164; Plow. 12 a; Lamb. 517, and see *Ex parte Aldridge*, 4 D. & R. 83; 2 D. & R. Mag. Ca. 170; 2 B. & C. 600, S. C.; *Wilkins v. Wright*, 2 C. & M. 191; *Atcheson v. Everitt*, Cowp. 382; *In re Gellibrand*, 1 D. & R. 121; and *R. v. Picton*, 2 East, 195.

where any penalty is directed to be levied, or distress to be made, by any act of parliament now in force, or hereafter to be made, it shall and may be lawful for any justice or justices acting under the authority of such acts respectively, and he and they is and are hereby authorized and empowered to administer an oath or oaths, affirmation or affirmations, to any person or persons, for the levying of such penalties, or making such distresses respectively."

And now, by 11 & 12 Vict. c. 43, s. 15, it is expressly enacted, that in all cases the witnesses must be examined upon oath or affirmation, and the justices before whom they shall appear for the purpose of being examined have full power to administer the usual oath or affirmation (z).

The oath must be administered to each witness *before* he is examined; and administering it afterwards is irregular: for the witness ought to be under the sanction of an oath the whole time he is giving his evidence (a).

It is the duty of the justice to take the examination of the witnesses formally in writing; mere memoranda, or such minutes as might satisfy the judgment of the justice at the moment, were held not to be sufficient, when by 3 Geo. 4, c. 23, the magistrate was bound to set out the evidence on the record of conviction as nearly as possible in the words used by the witnesses; and if he neglected so to do, a mandamus lay to compel him to comply with the requisites of that statute (b). If, therefore, the justice had neglected to take minutes of the evidence in a regular and formal manner, he was placed in considerable difficulty in obeying a mandamus under that statute. In one case, when it was suggested by counsel that it was not usual

Examination
in writing.

(z) See also 14 & 15 Vict. c. 99 ;
s. 16.

(a) *R. v. Kiddy*, 4 D. & R. 734 ;
2 D. & R. Mag. Ca. 364 ; *R. v.*
Glossop, 4 B. & A. 616.

(b) *In re Rix*, 4 D. & R. 352 ; 2
D. & R. Mag. Ca. 249 ; *R. v. Marsh*,
4 D. & R. 260 ; 2 D. & R. Mag.
Ca. 182.

for justices to take down the evidence of the witnesses in a formal manner, the Court said, it was the duty of the justices to take minutes of the evidence in order that, if called upon, they should be enabled to set it forth with accuracy (c).

The Coal Mines Regulation Act, 1887, expressly enacts that the Court shall, if required by either party, cause minutes of the evidence to be taken and preserved (d).

Although the evidence no longer appears on the face of the conviction it should still be taken down carefully in writing, for the assistance and protection of magistrates, in the event of ulterior proceedings being adopted in respect of their adjudication.

In presence
magistrate.

The magistrate who convicts must have heard the evidence, and not allow it to be taken in his absence by his clerk, or any other person (e).

The judicial discretion which a magistrate has to exercise on cases brought before him must be based on the evidence taken before him, and it is not competent for him to act upon evidence taken before another magistrate (f).

(c) *R. v. Warnford*, 5 D. & R. 489; 2 D. & R. Mag. Ca. 511.

(d) 50 & 51 Vict. c. 58, s. 62.

(e) *R. v. Inhabitants of Darton*, 12 A. & E. 78. The word "quashed" at p. 79 should be "confirmed." See *S. C.*, 3 P. & D. 483; *Caudle v. Seymour*, 1 Q. B. 889; *R. v. Watts*, 33 L. J., M. C. 63. If one of the justices, who subsequently takes part in the conviction, is not present at the hearing of the sum-

mons until a portion of the evidence has been given, the witnesses should be resworn, and should again give their evidence; and it is not sufficient that the evidence already given should be read over to such justice. The parties may waive such an irregularity; *R. v. Jeffreys*, 22 L. T. 786.

(f) *R. v. Guerin*, 58 L. J., M. C. 42; 60 L. T. 538.

SECT. 8.—*Of the Proofs necessary to support the Charge.*

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|--|-----|--------------------------------------|-------|
| 1. <i>Of Fact within Jurisdiction.</i> | 129 | 5. <i>Offence in Information</i> | . 134 |
| 2. <i>Time of Offence . . .</i> | 130 | 6. <i>Corroborative Evidence . .</i> | 134 |
| 3. <i>Negating Exemptions . .</i> | 132 | 7. <i>Sufficiency of Evidence, a</i> | |
| 4. <i>Specific Quantities, Sums, &c.</i> | 133 | <i>Question for Justices</i> | . 135 |

The evidence must support the charge by proof of every material fact, assigning a specific *date* and *place* to the offence. The degree of evidence, and the credit due to the witnesses, provided it be legally admissible, is exclusively for the judgment of the magistrate (*g*); and the reason formerly for requiring it to be set out in the conviction, was not to canvass their conclusion, but to ascertain that the premises upon which they had proceeded were legal. Many of the following cases were decided upon objections to the evidence, as stated on the face of the conviction, where it does not now appear; but they are still useful as showing the evidence which should be required by magistrates in order to justify a conviction.

First, the fact proved must appear to be within the jurisdiction of the convicting magistrate. Thus, a conviction, before the Lord Mayor of London for selling coals short of measure, contrary to 16 & 17 Car. 2, c. 2, was quashed because it was not proved that the coals were sold in London, or the liberties thereof; without which the Lord Mayor has no jurisdiction (*h*).

Any variance between the information and the evidence adduced in support thereof, as to the parish or township in which the offence is alleged to have been committed, is not to be deemed material, provided it be proved to have been committed within the jurisdiction of the justices hearing the information (*i*).

(*g*) *Ex parte Aldridge*, 4 D. & R. 83; 2 D. & R. Mag. Ca. 120; *Re Geswood*, 2 El. & Bl. 952; *Re JJ. Bristol*, 3 Ell. & B. 479, n. (*a*); 18 Jur. 426; *post*, p. 135.

(*h*) *R. v. Highmore*, 2 Ld. Raym.

1220; and see *R. v. Jeffries*, 1 T. R. 241.

(*i*) 11 & 12 Vict. c. 43, s. 9, *ante*, p. 86, as to adjourning the hearing, when the variance is such as to mislead the defendant.

Time of
offence.

The evidence ought also to fix a certain date to the offence in respect of *time*. When the information appeared on the face of the conviction, it was necessary, in order to support the conviction, that the offence should have been shown to have been committed on a day or time prior to the information, and this not merely by implication, but positively, otherwise the conviction was imperfect (*k*).

As a certain time is usually limited by statute for a summary prosecution before justices of the peace, it was necessary, on that account also, to fix the offence to a certain date, in order that the proceeding might appear to be within the prescribed period; for if that was not shown either by positive proof of the day, or by express reference in the evidence to a date previously mentioned, the conviction could not be supported (*l*). It was sufficient, however, to refer to a date already mentioned and ascertained (*m*).

It was held sufficiently certain to charge in the information, that the offence was committed *between* such a day and such a day; and there is one authority, here subjoined, for admitting the same latitude in the *evidence*:—

This was a conviction for deer-stealing (*n*). According to the record of conviction which remains filed in the Crown Office, the evidence (which is in the same words as the information) states the killing, "*inter ultimum diem Julii et sextum diem Augusti, et inter duodecim menses ante informationem*:"—the judgment is, "*quod convictus sit de præmissis*." To the objection for want of certainty in the proof, it was answered, that it was next to impossible for the witness to be able to swear to every day, and it is not to be intended that there were more deer stolen than one; and, moreover, *Eyre, J.*, said, "That it had

(*k*) See *R. v. Fuller*, 1 Ld. Raym. 510. & S. 534.

(*l*) See *R. v. Woodcock*, 7 East, 146; and *Cathcart v. Hardy*, 2 M.

(*m*) *R. v. Crisp*, 7 East, 390.

(*n*) *R. v. Hugo Simpson*, 10 Mod. 248.

been sufficiently settled in *Chandler's case* (o) to be well enough."

It should not, however, pass unobserved, that such uncertainty is open to more serious objections in the conviction, than where it is confined to the information, nor does it seem defensible by the same reasons. And it may be suggested, that, as the admissibility of this loose mode of proof, contrary to analogy and principle, rests upon one, or at most upon two instances, a prudent magistrate might hesitate to convict, without testimony of a more precise date. By 11 & 12 Vict. c. 43, s. 9, a variance between the information and the evidence, as to the time of committing the offence, is not to be deemed material, if it be proved that the information was in fact laid within the time limited by law for laying the same (p). Variance as to time.

Where the facts constituting an offence are all of a positive nature, there can be no doubt that they must be established in proof by the prosecutor, before any judgment of conviction can be pronounced, unless the statute which creates the offence expressly exempts the prosecutor from doing so. In some few instances this is the case; for example, by 26 Vict. c. 10, it is provided, that where an Evidence of facts constituting the offence.

(o) 14 East, 267. It does not, however, appear by the reports of that case, that the objection was to the evidence; it is only said to have been so charged in the information. It may be observed, that the mention of a precise day is less material in the information; because, even if stated, the informer is not tied down to that day; 1 Salk. 369; 2 Ld. Raym. 582; 11 & 12 Vict. c. 43, s. 9. Nor will the generality of the *charge* embarrass the party in his defence, so long as the fact must, in proof, be fixed for a certain day; for, if not prepared immediately with evidence applicable to that particular day, he may require time to adduce it, which the magistrate would be bound to grant. But, on the other hand, if the same

vague and uncertain description is admitted in evidence, it is manifest the defendant cannot have the benefit of proving his innocence, without being driven to the hardship of accounting for every day within the time specified; which, as the interval chosen may be of indefinite latitude, might be very difficult for him to do.

(p) See *ante*, p. 86, as to adjourning the hearing when the variance is such as to mislead the defendant. Where the summons alleges the offence to have been committed on a certain day, and it is proved at the hearing to have been in fact committed on some other day, the justices should amend the summons by altering the date; *Mayor of Exeter v. Heaman*, 37 L. T. 534.

information is laid for entering salmon for exportation in contravention of the act, it shall lie on the defendant to prove that the entry was not in contravention of it; and by 38 & 39 Vict. c. 25, where a person is charged with having applied to stores marks which are appropriated for use in or on her Majesty's stores, without lawful authority, proof of having such authority lies on the party accused; and under 27 & 28 Vict. c. 37 (as to chimney sweeps), when the age of the child comes in question, proof of the age lies on the defendant.

Evidence to
negative
exemptions,
how far
necessary.

But with regard to such offences as are made penal only by the want of certain qualifications in the offender, or by the absence of certain exculpatory circumstances, a difficulty sometimes occurred in determining the degree of *negative* proof which ought to be required by the magistrate (*q*). It is now expressly enacted by 11 & 12 Vict. c. 43, s. 14, that if the information in any case negatives any exemption, exception, proviso, or condition in the statute on which the same is framed, it shall not be necessary for the prosecutor to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same (*r*).

The Summary Jurisdiction Act, 1879, enacts that:—
“Any exception, exemption, proviso, excuse, or qualifica-

(*q*) *R. v. Jarvis*, 1 Burr. 153. See also *R. v. Marriott*, 1 Str. 66; *Bluet, q. t. v. Needs*, Com. Rep. 525; *R. v. Stone*, 1 East, 653.

(*r*) When the exception, &c. must be negatived in the conviction, see *post*, “Conviction.” On a conviction under 11 & 12 Vict. c. 49, which prohibited the sale of refreshment within certain hours on Sunday, by persons licensed to sell beer, &c., “except to travellers,” it was held, that the onus of showing that the persons supplied with refreshment were not travellers, lay on the informer. *Taylor v. Humphries*, 34 L. J., M. C. 1. The decision in that case was followed in *Davis v. Scrase*, L. R., 4 C. P.

172; 38 L. J., M. C. 79, where it was held that the reservation in favour of travellers in 2 & 3 Vict. c. 47, s. 42, which prohibited the opening of public-houses for the sale of wine, beer, &c., on Sundays, “except refreshment for travellers,” was not an exception within the meaning of 11 & 12 Vict. c. 43, s. 14; and therefore the onus of proving that the persons supplied with refreshments were not travellers was on the informer. But see now *Roberts v. Humphreys* L. R., 8 Q. B. 483; 42 L. J., M. C. 147; and Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 10.

tion, whether it does or does not accompany in the same section the description of the offence in the act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant (s)."

And that "the description of any offence in the words of the Act, or any order, byelaw, regulation, or other document creating the offence, or in similar words, shall be sufficient in law."

With regard to the precision necessary in another point, namely, in specifying exact *sums*, or quantities, where they constitute a necessary ingredient in the offence, the following cases occur as worthy of notice :—It was held to be requisite, in a conviction for not accounting and paying over money collected for tolls under a Turnpike Act, to particularize the sums alleged to be received, and the times of receiving them ; so that the party might be able to defend himself upon a second charge (t). Proof of specific quantity, sums, &c.

Also, wherever the magistrate is directed to award certain damages, by way of compensation to the party injured, there must be proof of some precise number, or quantity, by which the damage may be measured. Thus, a conviction on 43 Eliz. c. 7, for cutting down lime trees, was held to be defective, for not alleging the number of trees ; the magistrate being by the statute to assess the *quantum* of damages according to the injury (u). So a conviction under a statute (7 & 8 Geo. 4, c. 30, Malicious Trespass Act) which contained specific enactments and penalties for injuries according to the extent of damage which had been inflicted, and rendered the consequences of conviction

(s) 42 & 43 Vict c. 49, s. 39, sub-sec. 2.

(t) *R. v. Catherall*, 2 Str. 900.

(u) *R. v. Burnaby*, 2 Ld. Ray. 900 ; and see the conviction itself, 3 Ld. Ray. 125.

dependent upon the amount of such damage, was held to be bad for not finding as to the amount of damage (x).

Evidence of
offence in
information.

When the evidence and the information were set forth in the conviction, it was held, that the evidence must go to establish the identical offence which formed the subject of the information. It was not therefore sufficient that there appeared to be evidence of another offence of the same kind and subject to the same penalty (y). No substantial objection, however, can now be taken at the hearing upon the ground of variance between the information and the evidence, but if the justices are of opinion, that the defendant has been thereby misled, they may adjourn the hearing (z).

Variances.

The defects or variances, which may be cured by an amendment of the summons or warrants, are such as are merely technical and do not alter the nature of the offence set out (a).

If the evidence discloses a distinct offence to that set out in the summons or warrant, the justices should not convict, but should adjourn the case and issue fresh process (b).

Corroborative
evidence.

For the purpose of making an order in bastardy upon the putative father, the evidence of the mother must be corroborated in some material particular by other testimony (c). And an order of removal in respect of a settle-

(x) *Charter v. Grcame*, 13 Q. B. 216, 236, *post*, "Conviction."

(y) *R. v. Smith*, 8 T. R. 588; *R. v. Reason*, 6 *Id.* 375; *R. v. Davis*, *Id.* 178. See *R. v. Harpur*, 1 D. & R. 222; 1 D. & R. Mag. Ca. 67.

(z) 11 & 12 Vict. c. 43, ss. 1, 9.

(a) *Whittle v. Frankland*, 31 L. J., M. C. 81; 2 B. & S. 49; *Ralph v. Hurrell*, 44 L. J., M. C. 145; 32 L. T. 816.

(b) *Martin v. Pridgeon*, 28 L. J., M. C. 179; 1 E. & E. 778; *R. v. Brickhall*, 33 L. J., M. C. 156.

(c) 35 & 36 Vict. c. 65, s. 4. The statement of the mother as to the paternity of the child may

be sufficiently corroborated by the evidence of the acts of familiarity between her and the defendant, although these acts have taken place at a time before the child could have been begotten; *Cole v. Manning*, 2 Q. B. D. 611; 46 L. J., M. C. 175; 35 L. T. 941. A bastardy order cannot be made without the mother of the child being examined as a witness on the hearing. Where, therefore, the mother died after the summons was issued, but before the hearing, justices had no jurisdiction to make an order; *R. v. JJ. West Riding of Yorkshire*, L. R., 7 Q. B. 733.

ment acquired under 39 & 40 Vict. c. 61, s. 34, cannot be made upon the evidence of the person to be removed, without such corroboration as the justices think sufficient.

As to the degree and sufficiency of the evidence, and the credit due to the witnesses, the magistrates alone are the judges. In this respect they are placed in the situation of a jury (*d*) ; and, therefore, whatever the Queen's Bench Division, upon an inspection of the proceedings, would deem sufficient to be left to a jury on a trial, when the evidence was set out on the face of the conviction, was considered by them adequate to sustain the conclusion drawn by the convicting magistrates (*e*). Beyond that, the Court would not exercise a judgment upon the credit or weight due to the facts from which the conclusion was drawn. This criterion is accurately illustrated by the following example:—"This was a conviction, on the former statute of 5 Ann. c. 14, for keeping and using a gun, with intent to kill game. The witness deposed that the defendant on the day specified did keep and use a gun with intent to kill game, and that the witness was satisfied the defendant did keep and use the said gun for the purpose aforesaid, from the circumstance of his hearing a gun

Degree of evidence a question for the justices.

Instances.

(*d*) *R. v. Reason*, 6. T. R. 375 ; and see *R. v. Bolton*, 1 Q. B. 66. As proceedings before justices, however, are usually of a criminal and penal nature, and as they are substituted for a jury of twelve men, who must, in order to convict, have all been satisfied by the evidence of the criminality of the defendant, the evidence ought to be fully satisfactory and convincing to the mind and conscience of the magistrate before he pronounces the party to have been guilty. If any reasonable doubt exists in his mind, the party charged is entitled to the benefit of that doubt. Such cases, it is to be recollected, differ very materially indeed from those where mere civil rights are concerned, and where the mere preponderance

of evidence may be sufficient to decide the question ; 2 Stark. Ev. 414.

(*e*) See *Cornwell v. Sanders*, 3 B. & S. 206 ; 32 L. J., M. C. 6. A test is, whether, if the case had been tried at *Nisi Prius*, the judge would have withdrawn the case from the jury ; per *Blackburn, J.*, *R. v. Ternan*, 33 L. J., M. C. 216 ; and as to acting on circumstantial evidence, see *Brown v. Turner*, 13 C. B., N. S. 485 ; 32 L. J., M. C. 106. The evidence may now be brought before the Court of Quarter Sessions on appeal, and before the Superior Court either by affidavit or by a case stated for the opinion of the Court, see *post*, Part III. Chapters IV. & V.

go off, and observing that it was fired by the defendant, who was then walking about a piece of ground with that apparent intent." It was objected, that neither the keeping nor the using a gun is of itself an offence, without proof of its being used to kill game; and that it was not hinted that it was fired at game in the instance spoken of by the witness. Lord *Kenyon*:—"Here was evidence tending to prove the offence. That being the case, we have no authority to inquire farther, and see whether the conclusion drawn by the magistrate be, or be not, the inevitable conclusion from the evidence. It is sufficient in convictions, if there were such evidence before the magistrate as would be sufficient to be left to the jury. Here, we cannot say there was no evidence of the fact for the consideration of the magistrate" (*f*).

So, in a conviction of the defendant for causing to be acted, at the *Coburg Theatre*, for gain and reward, a certain entertainment of the stage called *Richard the Third*,—the evidence set forth was, that the defendant was seen once or twice at the rehearsals of *Richard*; that another person was stage manager, and that the defendant engaged *I. S.* to perform, and gave him a cheque for the amount of his benefit: it was held, that this was sufficient to warrant the justices in drawing the conclusion, that the defendant caused the play of *Richard the Third* to be performed. *Abbott*, C. J., said, "As to the objection, that this evidence did not warrant the conviction, it is sufficient to say, that it cannot prevail, unless the evidence stated on the face of the conviction be such as that no reasonable person could draw the conclusion that the defendant caused this particular play to be performed. I am very far from thinking that to be the case. The magistrates might very reasonably draw the conclusion;

(*f*) *R. v. Davis*, 6 T. R. 177; and 411, *per cur.*; *R. v. Smith*, 8 T. R. see *Coster v. Wilson*, 3 M. & W. 588.

and, having done so, we cannot overturn their decision as to the fact" (g).

The same criterion will be found to be kept in view throughout the ensuing cases, whether the determination of the superior Court has been to confirm, or set aside, the conclusion of the justices. In those in which the Court has declared the evidence insufficient, that judgment may be referred to the want of sufficient legal evidence to have gone to a jury.

In a conviction for deer-stealing, on 3 & 4 W. & M. c. 10, the evidence stated was, that the justice entered into a glover's house, and, finding a deer-skin, asked him how he came by it; the glover said he bought it of *I. S.*, who, not giving a good account of himself, was convicted. This was held sufficient; the Court held, that the justice might convict the person that sold the skin; for the statute would be easily evaded, if the deer-stealer could discharge himself by a sale (h).

The following case shows, however, that the Court would so far take notice of the sufficiency of evidence, upon which the conviction was framed, as to set that aside, if they thought the evidence too slight to warrant it. This was a conviction for "*knowingly harbouring, keeping and concealing, and permitting to be knowingly harboured, &c., a quantity of tea, unlawfully imported.*" The evidence stated in the conviction was, that, in a field about a quarter of a mile from the defendant's house, and which field the witnesses swore they believed to be in the defendant's occupation, two of his servants were seen by the witnesses loading the tea in question into a cart with two horses, which one of the witnesses swore were the defendant's. Another witness proved, that, in a conversa-

Where the Court would judge of the evidence.

(g) *R. v. Glossop*, 4 B. & A. 616.

(h) *R. v. Jennings*, 1 Salk. 383, The case of possession unaccounted for, is now expressly provided for by 24 & 25 Vict. c. 96 s. 14 (as it formerly was by 7 & 8 Geo. 4, c.

29, s. 27). The above case, however, though no longer of use as a precedent, may, nevertheless, serve to illustrate the present subject of inquiry. See *R. v. JJ. Oxfordsh.*, 1 M. & S. 446.

tion with the defendant, he said, "It was unfortunate for him, that his servants had taken his cart and horses without his knowledge." The conviction further set forth, that the defendant, in answer to the charge, declared he knew nothing of his servants having the tea, but did not produce either of the said servants, or any other evidence whatever. Upon this evidence, which was all set out as above, the conviction and judgment followed. The conviction being removed into the Queen's Bench by *certiorari*, a rule was obtained to show cause why it should not be quashed as to the penalty for *knowingly* harbouring, &c., for want of sufficient evidence as to that part of the offence: to that extent, accordingly, the rule was made absolute (i).

So on a conviction on 11 Geo. 1, c. 30, s. 16, for knowingly harbouring, keeping, and concealing three gallons and two quarts of foreign geneva, being run goods, &c. liable to the duties of excise, the conviction having been returned by *certiorari* into the Queen's Bench, for the purpose of being quashed for informality, set forth the evidence upon which the convicting justices acted; from which it appeared, that, search having been made in the dwelling-house of the defendant for run goods, a half-anker of foreign geneva was found concealed in an inner room therein; that the defendant was not in the house when the search was made, but that his wife was present, and also two men, one of whom instantly left the premises upon the appearance of the searching officers; that the defendant, before the convicting justices, in answer to the charge, did not produce any evidence, but insisted that the room, in which the seizure was made, was detached from his dwelling-house, and had a door always left unlocked; whereupon the justices found him guilty of the offence charged in the information. On moving to quash this conviction on two grounds; first, that, on the face of the conviction, there

(i) *R. v. Hale*, Cowp. 728.

was not sufficient evidence to show that the defendant had any knowledge of the geneva being in his house at the time of the seizure ; and, secondly, that there was nothing to show, conclusively, that the spirits seized were run goods,—*Abbott*, C. J., said : “ Upon the whole, we are of opinion, as to the first point, that the evidence set out is too slight to found a conviction. The mere naked fact of the spirits being found in the defendant’s house during his absence cannot be considered as conclusive (*k*) evidence of knowledge to support a conviction on this statute. There is abundant ground for suspicion, but we cannot say that it is a clear and satisfactory ground to convict. I therefore think that the justices drew a wrong conclusion.”—*Bayley*, J. : “ There must be some clear and satisfactory evidence, that the party knowingly harboured, or permitted, the spirits to remain in his house.” Conviction quashed (*l*).

In the foregoing cases, the Court probably considered the facts stated as not sufficient to have been left to a jury, on the question of the defendant’s knowledge. In another case, where the question was of a similar kind, the facts were as follows :—The offence was under 19 Geo. 3, c. 50, for having, in the defendant’s custody and possession, a private still. The evidence recited, that there was found by the witness, under a pig-stye in the garden of the defendant’s house, a private still just worked off, a worm-tub, and worm, and six wash backs, containing one hundred and fifty gallons of wash. Among several other objections urged against the conviction, one was, that the evidence did not support the charge of the still being in the custody and possession of the defendant, and that it was not even stated that the garden was in the defendant’s possession (*m*). In consequence of other

(*k*) The word “conclusive” is here probably used in the sense of “satisfactory.”

(*l*) *Ex parte Ransley*, 3 D. & R. 572 ; 2 D. & R. Mag. Ca. 151 ; see *Ex parte Smith*, 3 D. & R. 461 ; 2

D. & R. Mag. Ca. 126.

(*m*) The counsel, in support of this objection, referred to *R. v. Abbott*, Doug. 553, where it was said, in argument, that if goods be found in the party’s possession, his

defects in the conviction, it became unnecessary to determine this objection: but, from what was thrown out by the Court in the course of the argument, their opinion may be collected to have been against the objection; and they intimated, that the circumstance of the articles being found concealed in the defendant's garden, with the appearance of being just worked off, was evidence sufficient for the magistrates (who, in these cases, *Grose J.*, observed, are put in the place of a jury), to find the fact, that they were in the defendant's custody and possession. A doubt, however, was suggested by one of the judges (*Le Blanc, J.*), upon the ground that the defendant was not stated to be either in the house, or on the spot at the time (*n*). Upon the hearing of an information for an assault, evidence was given, which, if true, showed that there had been not only an assault but also a rape committed on the complainant. It was held, however, that the justices had jurisdiction to convict of the assault on the ground that it was their province to decide whether the evidence of the rape was true or not—Mr. Justice *Crompton* saying, “The credibility of the evidence has from the time of Lord *Tenterden* been for the justice to decide upon” (*o*).

It has been held, on a conviction for selling bread under the lawful weight, that the fact of the servant selling bread in the master's shop is good evidence of its being the master's bread. It is, however, no more than evidence; and the charge against the master must be directly for selling bread; for where the offence stated was merely, that the servant sold bread in his shop, this was held to be bad, as charging by way of offence, what was only the evidence of it (*p*).

If the offence is confined to persons of a particular

knowledge shall be presumed, but not when they are found in his grounds.

(*n*) *R. v. Chandler*, 14 East, 273.

(*o*) *Wilkinson v. Dutton*, 3 B. &

S. 821; 32 L. J., M. C. 162. See *Re Thompson*, 6 H. & N. 193; 30 L. J., M. C. 20, n. (3).

(*p*) *R. v. Bradley*, 10 Mod. 156.

description, there must be competent evidence of their answering that description. Thus, a conviction for trading as a hawker and pedlar without a licence (under the former acts of 3 & 4 Anne, c. 4, and 9 & 10 Will. 3, c. 27, s. 8), was held not to be supported by evidence of a single act of selling a parcel of silk handkerchiefs to a particular person; for the bare act of sale, it was held, did not show the defendant to have been such a person as by law is required to take out a licence (*q*). But, on another conviction under the same statute (9 & 10 Will. 3, c. 27, s. 8) for trading as a hawker and pedlar *without a licence*, evidence of the defendant's refusal to produce a licence on demand was deemed sufficient proof of his not having one, which was the offence he was convicted of (*r*).

Though the general rule was, that no material omission in the evidence, as to the description of the defendant, in those particulars which were necessary to constitute the offence, could be supplied by intendment (*s*); yet, how far that rule might be qualified, in favour of what was necessarily and plainly to be collected from the facts stated, though it was not expressly averred, may be judged from what is laid down in the following case:

What intendment admitted in evidence.

This was a conviction on the Malt Act, 45 Geo. 3; the

(*q*) *R. v. Little*, 1 Burr. 610; see the observations upon this case, *post*, "Conviction." As far as may be collected from a very careless report, the same point seems to have been decided in another case, *Loft*. 184. See *Allen v. Sparkhall*, 1 B. & A. 100; *R. v. Turner*, 4 B. & A. 510; *Dean v. King*, *Id.* 517; *R. v. Webdell*, 3 D. & R. 360; 2 D. & R. Mag. Ca. 44; 2 B. & C. 136.

In *R. v. Salomons*, 1 T. R. 251, the offence charged was, the keeping an office for the sale of lottery-tickets; viz the sale of a ticket, No. 34,907, and receiving money for the share in the said ticket, without a licence. It was objected, on the authority of the above case of *R. v. Little*, that the defendant

was not described as a person from whom, by the act, a licence could be required; inasmuch as a licence was not necessary for the sale of one ticket only. But the Court gave no opinion on this point.

(*r*) *R. v. Smith*, 3 Burr. 1475, and note. It has been held, in an action for penalties against an inn-keeper, on the Post-Horse Act, that it is not necessary to show the licence itself of the defendant (although it was alleged that he was licensed to let post-horses to hire); but, as against him, it is sufficient evidence that he had written over his door, "licensed to let post-horses;" *Radford v. Briggs*, 3 T. R. 637.

(*s*) *Post*, "Conviction."

offence, which was that of wetting malt, was laid on the *twelfth of May*; and the witness, an excise officer, after stating "that the defendant *is* a maltster" (which it was agreed must refer to the day of the conviction, and not to the day laid for the offence), went on, "that he surveyed the malt-house of the said defendant on the said *twelfth day of May*, and found a floor of malt in operation." A doubt was suggested, whether the evidence sufficiently showed the defendant to have been a maltster at the time of the offence committed. It was argued for the affirmative, first, that it was sufficiently alleged by reference to the information, the witness having spoken of the *said* defendant, who had been sufficiently described in the information (*t*): the Court, however, did not concur in this argument. It was therefore further contended, that the fact of the defendant being a maltster at the time of the offence, viz., *twelfth of May*, must necessarily be collected from the whole of the evidence; and the majority of the Court were of that opinion. Lord *Ellenborough*:—"If any material fact were wanting in the evidence to make out the charge, I should be very unwilling to supply it by intendment; but, taking the whole evidence together, it does sufficiently appear that the defendant was a maltster at the time of the offence committed. All the difficulty arises from the order in which the evidence was taken down. The witness begins by stating that the defendant *is* a maltster; which would refer to the time he is speaking, the *fourth of June*. But, without adverting to that, see how the evidence would stand without it. The witness deposed, that, on the *twelfth of May* he surveyed the *malt-house* of the defendant: now it could not be then the defendant's *malt-house*, nor could the officer then have surveyed it, unless the defendant had entered the *malt-house*, as a *maltster*; it would otherwise have been mis-

(*t*) This was contended upon the alleged authority of *R. v. Tucke*, 2 Ld. Ray. 1386; but the Court denied the authority of that case.

called the defendant's *malt-house*. The term *survey*, too, is used in *malt acts*; and I believe the officer has no authority to survey a *malt-house*, unless it be entered as such." *Grose*, J., thought the fair import of the evidence was, that the defendant was a *maltster* on the *twelfth of May*, when the witness as an excise officer, *surveyed his malt-house*. *Le Blanc*, J., agreed in the same opinion. But *Lawrence*, J., said, "I have great doubts, whether the fact of the defendant's being a *maltster* at the time of the offence sufficiently appears. I have always considered, that, in these summary convictions, the evidence necessary to support the charge ought to be precise; and it is not usual to have recourse to inference in order to support a conviction. Suppose the evidence had only been, that the officer surveyed the defendant's *malt-house*; can we infer, merely from the word *survey*, that the *malt-house* surveyed was a *malt-house* entered by the defendant, and that he was a *maltster at the time*? This, I think, would be going further in support of a conviction than any case has yet gone the length of." The conviction was affirmed (*u*).

On this head, of the sufficiency of evidence admitted by the magistrates, it may be noticed, that, in a conviction on the former statute of 5 Anne, c. 14, s. 4, for keeping and using a greyhound, not being duly qualified, it was held, that the magistrates were justified in founding the defendant's want of qualification upon the circumstance of his having on a former occasion before the same magistrates, acting as commissioners under the income tax, sworn to an estate under 100*l.* a year (*x*).

The evidence on both sides was required to be specially stated in the conviction by 3 Geo. 4, c. 23. This, although contrary, as it seems, to what had been formerly held (*y*),

Evidence not stated in the conviction.

(*u*) *R. v. Crisp*, 7 East, 389, 397.

(*x*) *R. v. Clarke*, 8 T. R. 220. No precise form of words was necessary in stating the proofs of the offence. It was sufficient, if the deposition was in terms ordinarily intelligible,

having regard to the usual import of technical modes of speech adapted to the subject; *R. v. Crisp*, 7 East, 393, 394; 4th objection.

(*y*) *R. v. Pullen*, 1 Salk. 369, in which it was held sufficient to state

was established as a *general* rule, with one exception only, before the passing of that statute, so that sufficient proof might appear upon the face of the record to sustain every material part of the charge, and to warrant the adjudication. A known distinction in this respect was recognized between orders and convictions; and in the former it was allowed to state the result only of the evidence (*z*). The single exception which was admitted with regard to one class of convictions was considered as an anomaly, which could not be drawn into any general consequence, nor afford a precedent for any other class of convictions. The exceptional cases alluded to were all upon the former Game Act, 5 Anne, c. 14 (*a*). Also where the justices were authorized to convict on their own view, the particular facts presented to their view need not have been set out in the conviction (*b*). But every material fact necessary to support such a conviction must have been alleged and proved (*c*).

The general form of conviction and order formerly given by 11 & 12 Vict. c. 43, and now by the Summary Jurisdiction Rules, 1886 (*d*), omits all statement of the evidence, and at once proceeds to the adjudication. The Court, therefore, now can form a judgment upon the evidence only when the facts are brought before it by affidavit, or on a case stated for its opinion (*e*).

Irrelevant
evidence.

Justices have power to reject irrelevant evidence (*f*).

that the witness formerly made oath *de veritate premissorum*, without setting out the evidence specially.

(*z*) *R. v. Lloyd*, 2 Str. 996; *R. v. Killett*, 4 Burr. 2063.

(*a*) *R. v. Pearse*, 9 East, 358.

(*b*) *R. v. Wilson*, 1 A. & E. 627; 3 Nev. & Man. 753.

(*c*) *R. v. Wilson*, 5 Nev. & Man. 164.

(*d*) See forms 11, 12, 18; and in schedule to Summary Jurisdiction Rules, 1886.

(*e*) *R. v. Bolton*, 1 Q. B. 66; *Re Geswood*, 2 El. & Bl. 952. *Post*,

Part III., Chapters IV. and V.

(*f*) Thus, where defendant was summoned for an offence against the Metropolitan Police Act, and it was proved that he used affixed to the front of his shop a moveable show-board which projected over the footway of the street, and the defendant proposed to call witnesses to prove that they were not incommoded by the projection, it was held that the magistrate had power to reject such evidence as irrelevant *Read v. Perrett*, 1 Ex. D. 349.

SECT. 9.—*Of the Defence.*

| | |
|--|---|
| 1. <i>Claim of Title or other Question beyond Jurisdiction</i> . . . 145 | 3. <i>Mens rea</i> . . . 159 |
| 2. <i>Res judicata</i> . . . 154 | 4. <i>Cumulative Remedy</i> . . . 161 |
| | 5. <i>Agreement between Parties</i> . 162 |

When the witnesses in support of the charge have been heard, the defendant should be called upon for his defence, and the magistrate is bound to hear the evidence tendered by him.

The evidence adduced on behalf of the accused may be simply to contradict or throw a different and innocent complexion on the facts proved by the witnesses for the prosecution; or to prove that the accused is within some proviso or exception excusing or qualifying the facts charged; an *onus* (as we have seen (*g*)) thrown upon him; or to disprove some fact which by statute is to be assumed against him till the contrary is shown; or to set up such a *bond fide* claim or dispute as will oust the jurisdiction of the justices, and compel them to abstain from pronouncing any adjudication, or to show that the matter has been already decided, or that the remedy has been misconceived.

It has always been held as a maxim, that where the Claim of title. title to property is in question, the exercise of a summary jurisdiction by justices of the peace is ousted (*h*). This principle is not founded upon any legislative provision, but is a qualification which the law itself raises in the execution of penal statutes (*i*), and is always implied in

(*g*) *Ante*, p. 132.

(*h*) *R. v. Burnaby*, 1 Salk. 181; 3 Salk. 217; 2 Ld. Ray. 900.

(*i*) It is sometimes, also, the subject of special enactment, as in the statute, now repealed, of 22 & 23 Car. 2, c. 25, s. 9, (the first act which gave an appeal,) the appeal clause making the determination of the justices final, with this proviso, "if no title to any land, royalty or fishery be therein concerned." So also, in the former Petty Trespass

Act, 1 Geo. 4, c. 56, there was an express provision, ousting the jurisdiction of the justices, where the title to the property was in question. The Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24, (now superseded by 24 & 25 Vict. c. 97, s. 52, which is to same effect,) expressly excepts from the jurisdiction of magistrates injuries done under a *bond fide* claim of right; see *Charter v. Greame*, 13 Q. B. 216, 226. See also 1 & 2 Will. 4,

their construction: and so rigid is this rule, that even where a statute allows the accused to go into the question of title, he is not obliged to do so, and may object to the jurisdiction of the justices (*k*).

The following cases illustrate the extent and application of this rule.

The first case arose on an objection made to a conviction for deer-stealing, viz., that it was only stated that the defendant unlawfully killed, &c.; for, it was urged, every unlawful killing is not within the act. Upon which Lord C. J. *Holt* said, "Without doubt, if the defendant has but a colour of title, the justices have no jurisdiction. If there is a pretence of right, we ought to suppose that the justice would do right, and acquit the defendant; because he is entrusted with the execution of the law. Thus, if there was a dispute about the limits of a walk in a forest, and one claims as part of his walk what is in fact a part of the division of another, and accordingly kills deer there, the case is out of the intent of the act, though plainly within the words. The intent is to punish rogues and vagabonds, and not persons who by mistake exceed what the law warrants" (*l*). It should, however, be understood that "there must be some show of reason in the claim, and it is not sufficient unless the defendant satisfy the justices that there is some reasonable ground for his assertion of title" (*m*). The claim, therefore, must be one that

c. 32, s. 35 (Game Act). On the other hand, by 2 & 3 Vict. c. 71, s. 40 (the Metropolitan Police Act), on complaint made to a magistrate acting under that statute, that goods not exceeding the value of 15*l.* are improperly detained, he may inquire into the title thereto or to the possession thereof. Justices also have jurisdiction, under 11 Geo. 2, c. 19, s. 4, to adjudicate upon an information for a fraudulent removal of goods by a tenant, although it may appear that the property in the premises is dis-

puted, and that the tenant has paid the rent to one of the claimants; *Coster v. Wilson*, 3 M. & W. 411.

(*k*) *Per* Coleridge, J., in *R. v. Cridland*, 7 El. & Bl. 853; 27 L. J., M. C. 31; and judges have refused to try a question of title in actions for game penalties. See *Calcraft v. Gibbs*, 4 T. R. 682, and notes to that case.

(*l*) *R. v. Speed*, 1 Ld. Ray. 588.

(*m*) *Per* Cockburn, C. J., in *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6; *per* Abbott, C. J., in *Hunt v. Andrews*, 3 B. & Ald.

can legally exist, and consequently a defendant was not allowed to oust the jurisdiction of the justices by claiming a right as one of the public to fish in a non-navigable river (*n*), though if he had made such a claim with respect to a navigable one, *i. e.*, where tide ebbs and flows, it would have been sufficient (*o*). And in like manner, a claim by the defendant as one of the public to shoot over certain land where in fact the public had hitherto shot without interruption, was held insufficient to stay the justices from hearing the complaint, as no such right is known to the law (*p*). It is sometimes said, and truly, that matter which would not be any defence in an action of trespass may nevertheless form a good ground for protection against a summary conviction. This, however, must be taken to apply to the question of *mens rea* (to which we shall presently allude), and not to the question of ouster of jurisdiction. Where there must be a *mens rea* to constitute an offence, the fact of a man having acted under a claim or notion of right, if established, will form a defence against a criminal proceeding, and must be taken into consideration by the justices, not as a question of title, but as a question of *bona fides*. When, however, the object is to oust the jurisdiction of the justices, on the ground that title comes in question, then the claim must be of such a nature as, if substantiated, would afford a defence to an action (*p*). The claim of title must also be on behalf of the defendant or those through whom he claims, and he cannot set up a *jus*

346. See also *Legg v. Pardoe*, 9 C. B., N. S. 289; 30 L. J., M. C. 108; *Calcraft v. Gibbs*, 4 T. R. 682. A claim of right to fish, supported by meagre evidence, was held not a reasonable claim ousting the jurisdiction of justices; *Reece v. Miller*, 8 Q. B. D. 626; 51 L. J., M. C. 64.

(*n*) *Hudson v. M'Rae*, 33 L. J., M. C. 65; 4 B. & S. 585; *Harreaves v. Diddams*, L. R., 10 Q. B. 582; 44 L. J., M. C. 178; 32 L. T.

600; *White v. Fox*, 49 L. J., M. C. 60; *Mussett v. Burch*, 35 L. T. 486; *Murphy v. Ryan*, 1 I. R., 2 C. L. 143.

(*o*) *R. v. Stimpson*, 4 B. & S. 301; 32 L. J. M. C. 208. See *Paley v. Birch*, 16 L. T. 410, where it was held that there was evidence to justify the magistrates in finding that the claim was not *bona fide* set up.

(*p*) *Leatt v. Vine*, 30 L. J., M. C. 207.

tertiū (q). Although as a rule justices have no jurisdiction to inquire into any case involving a title to real property; yet, when by statute they are empowered to ascertain a certain fact which necessarily involves such a question, their jurisdiction remains (r). Thus, upon the hearing of an information and complaint by parish officers, under the 59 Geo. 3, c. 12, s. 24, for the purpose of obtaining possession of a parish house, the justices must inquire whether the house in question be a parish house, and they must decide that question though the evidence adduced before them raise the question whether the house was the property of the person informed against, or of his ancestor (s). Where, on the hearing of a complaint under 5 & 6 Will. 4, c. 50, for leaving rubbish on a highway, the defendant, who was owner of the land on both sides of the road, claimed that the soil was his, subject only to a private right of way, and it was contended that this raised a question of title which the justices could not decide, it was held that this was not so, for the title to the land was not disputed, but only the question of highway or no highway, which was a question for the justices to decide (t).

A *bonâ fide* claim of a right of way ousts jurisdiction (u).

Where the defendant was accused of trespassing in pursuit of game under 1 & 2 Will. 4, c. 32, and it was proved that he was shooting by permission of C., who stated that he had a parol agreement with Lord S., as to whose title no evidence was given, the justices decided that there was

(q) *Cornicell v. Sanders*, 3 B. & S. 902.
206; 32 L. J., M. C. 6.

(r) *R. v. JJ. Llanfillo*, 15 L. T. 277.

(s) *Ex parte Vaughan*, L. R., 2 Q. B. 114; 36 L. J., M. C. 17; see also *R. v. Dayman*, 26 L. J., M. C. 128; *R. v. Critchlow*, 26 W. R. 681; *R. v. Allen*, 7 B. & S.

(t) *Williams v. Adams*, 2 B. & S. 312; 31 L. J., M. C. 109; *Leicester Urban Authority v. Holland*, 57 L. J., M. C. 75; *R. v. JJ. Dorset*, 35 L. J., M. C. 211.

(u) *Cole v. Miles*, 57 L. J., M. C. 132; 36 W. R. 784; *R. v. Snape*, 11 W. R. 434.

a *bond fide* claim of right, and the Queen's Bench refused to interfere with their decision (x).

It has been held that it is not sufficient to oust the jurisdiction of the justices in regard to a charge of trespass in pursuit of game under 1 & 2 Will. 4, c. 32, that there is an honest claim of right, if such claim is absurd or impossible in point of law; the question being whether a reasonable claim of right is involved, and not one of *mens rea*, inasmuch as the statute is not a mere criminal statute, but is intended for the protection of the peculiar rights of those entitled to shoot game (y).

By 24 & 25 Vict. c. 100, s. 46, it is provided that justices "shall not hear and determine any case of assault in which any question shall arise as to the title to land." Under this section it has been held, that justices cannot proceed to inquire into and determine by summary conviction any excess of force alleged to have been used in the assertion of title (z).

The stat. 7 & 8 Geo. 4, c. 30 (now superseded by 24 & 25 Vict. c. 97, s. 52, which, however, is to the same effect), relating to malicious injuries to property, contained a proviso (a) in sect. 24, that "nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious, committed in hunting, &c.;" but it was held, that the justices were not obliged to dismiss a charge made under this section for maliciously damaging growing wood, upon the mere statement of the accused party that he acted under a fair supposition of right, but that, in default of proof by him, they might

(x) *Legg v. Pardoe*, 9 C. B., N. S. 289; 30 L. J., M. C. 108; *Adams v. Masters*, 24 L. T. 502; *Birnie v. Marshall*, 35 L. T. 373.

(y) *Watkins v. Major*, L. R., 10 C. P. 662; 44 L. J., M. C. 64; 33 L. T. 352; 24 W. R. 164; *Watkins v. Smith*, 38 L. T. 525; 26 W. R.

692.

(z) *R. v. Pearson*, L. R., 5 Q. B. 237; 39 L. J., M. C. 76; 22 L. T. 126.

(a) This proviso applied to the whole act. 3 Burn's Justice, tit. "Malicious Injuries."

judge from all the circumstances whether or not he did so act. And it was further held, to be no proof of a *bonâ fide* claim subsisting, that several parties, other than the individual charged, had committed several trespasses, using the same colour of right as that which he professed to rely upon, and that the complainant had obtained injunctions from the Court of Chancery against such parties (b).

In a case under the present statute, 24 & 25 Vict. c. 97, s. 52, which contains the above express proviso, where the justices found that the defendant did not act under a fair and reasonable supposition that he had the right to do the act complained of, and convicted him, the Court of Queen's Bench upheld the conviction, holding that the above express provision over-rode the proviso usually implied as to summary convictions, that a *bonâ fide* claim of right is sufficient to oust the jurisdiction of justices (c). That case decides that where a private person does wilful damage to property mere *bona fides* is not of itself a protection from the penalty of the statute. Where the person charged under this section is not a private individual the rule is otherwise. Thus the surveyor of highways, who has a control over and interest in the drains laid for carrying off the water from the highways, in dealing *bonâ fide* with the drains is not guilty of wilful or malicious damage (d).

In a case where a railway company were possessed of a thoroughfare which had the appearance of a public street, and allowed certain cabs to stand in the thoroughfare upon payment of a weekly sum by the drivers, and the defendant not being one of the drivers who paid, stood his cab in the thoroughfare, and refused to leave when re-

(b) *R. v. Dodson and others*, 9 A. & E. 704; *Charter v. Greame*, 13 Q. B. 216; and see *Baylis v. Strickland*, 1 M. & G. 591, 598; and *Leatt v. Vine*, 30 L. J., M. C. 207.

(c) *White v. Feast*, L. R., 7 Q. B. 353; 41 L. J., M. C. 81; 26 L. T. 611; 20 W. R. 382.

(d) *Denny v. Thwaites*, 2 Ex. D. 21; 46 L. J., M. C. 141; 35 L. T. 628.

requested on behalf of the company ; it was held, that if he intentionally and purposely kept his cab there upon the stand, after being requested to move off, he did so wilfully and was liable to the penalty imposed by the statute (*e*), and that the magistrate ought to have convicted the defendant, although he honestly believed that he was entitled to keep his cab there without making any payment to the company (*f*).

To oust the summary jurisdiction of justices on the ground that a *bond fide* question of title arises, it is sufficient to show that the act complained of as a trespass was committed in the exercise of a supposed right, which the alleged trespasser *bond fide* believed that he possessed (*g*).

Where the defendant was charged under 5 & 6 Will. 4, c. 50, s. 72, with obstructing a public footway, and it was proved that he had put up a stall for the sale of refreshments at statute sessions for the hiring of servants, and this had been done for more than fifty years, and the statute sessions had been held before 5 Eliz. c. 4 ; the defendant thereupon contended that he had a right by custom to erect his stall in the same way as at a fair, or at all events, that he *bond fide* claimed such a right, and the justices' jurisdiction was therefore ousted. The Court of Queen's Bench held that the jurisdiction of the justices was not ousted by a claim of right to put up such stalls,

(*e*) 3 & 4 Vict. c. 97, s. 17. "If any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officers, &c., he shall forfeit," &c.

(*f*) *Foulger v. Steadman*, L. R., 8 Q. B. 65 ; 42 L. J., M. C. 3. See *Wilkinson v. Goffin*, 33 L. T., N. S. 824, where the defendant was charged under the same section and it was proved that he kept his van standing outside a publichouse

on railway premises for twenty minutes, during part of which time he was in the publichouse. The justices considered the defendant's claim of right to use the ground as a customer of the publichouse to be *bond fide*, and their jurisdiction to be ousted thereby. The Court held that, as there might be a legal foundation for his claim of right, the justices came to a proper conclusion.

(*g*) *Mathews v. Carpenter*, 16 L. R., Ir. 420.

because, as the statute sessions were introduced by the Statute of Labourers, the first of which was in the reign of Edw. 3, there could be no such custom by immemorial usage as was claimed (*h*).

Although, as a rule, justices have no power to inquire into a case involving a title to real property, yet when the title is itself the question which they have to decide, their jurisdiction remains (*i*).

Question
beyond
jurisdiction.

Besides ousting the jurisdiction of the justices by a claim of title, the defendant may in some cases attain the same result by raising a question which, by statutory provisions, the justices are restrained from deciding. Thus, under 53 Geo. 3, c. 127, s. 7 (*j*), a defendant being summoned for non-payment of a church rate, and *bonâ fide* disputing the validity of the rate or his liability to pay, the justices must forbear giving judgment thereon (*k*).

Bona fides.

The claim, however, must be *bonâ fide*, and not a mere pretence to oust jurisdiction, whether it raise a question of title or of any other matter which the justices cannot decide; and it is for the justices to say whether the claim be *bonâ fide* or a mere pretence (*l*). They cannot, how-

(*h*) *Simpson v. Wells*, L. R., 7 Q. B. 214; 41 L. J., M. C. 105.

(*i*) *Leicester U. S. A. v. Holland*, 57 L. J., M. C. 75; *Williams v. Adams*, 31 L. J., M. C. 109; 2 B. & S. 312; *R. v. Young*, 52 L. J., M. C. 55; *Ex p. Vaughan*, L. R. 2 Q. B. 114; 36 L. J., M. C. 17.

(*j*) Repealed by Stat. Law Rev. Act, 1873, except as to any rate the payment of which may still be enforced by process of law. See *Re Balkin*, 25 L. J., M. C. 126.

(*k*) As to when the finding of justices as to the defendant's *bona fides* is not conclusive, see *Lovesy v. Stallard*, 30 L. T. 792. "When the *bona fides* of a defendant's claim of title is ignored by a magistrate, he is bound to state clearly his grounds for arriving at

a conclusion." Per *Field, J.*, in *Birnie v. Marshall*, 35 L. T. 373. A mere assertion by the solicitor for the defendant of a claim of right does not sufficiently establish a *bonâ fide* objection on the defendant's part. *R. v. Sandford*, 30 L. T. 601. The mere production of a deed is not such a *bonâ fide* claim of right as to oust the jurisdiction. *R. v. Priest*, W. N. (1887) 65.

(*l*) See *R. v. Mussett*, 25 L. T. 429; 20 W. R. 670; *R. v. JJ. Derbyshire*, 11 W. R. 780; *R. v. Huntsworth*, 33 L. J., M. C. 131; *R. v. Nunneley*, El., Bl. & El. 852; 27 L. J., M. C. 260; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

ever, decide contrary to the facts, and so give themselves jurisdiction, but must have reasonable and probable cause for their decision (*m*), which is subject to review in the Queen's Bench Division (*n*).

Thus, where a defendant, on being summoned for non-payment of a church rate, objected to the rate as illegal, stated his objections, was willing to be sworn, and asked for an adjournment in order to procure legal advice, it was held that the justices were wrong in deciding that the objection was not *bond fide*; Lord Campbell, C. J., saying, "there was no colour for their coming to this decision; the evidence was all on one side; it was uncontradicted, and showed the defendant was *bond fide* resisting the rate. He gave his grounds for so resisting, and those grounds were reasonable" (*o*). So, where the defendants were convicted of trespass in pursuit of game under 1 & 2 Will. 4, c. 33, and it appeared that the defendants stated before the justices that they had authority under the owner of the land, and asked for an adjournment to procure evidence, it was held that there was a *bond fide* claim, and that the justices were wrong in refusing to adjourn, and in convicting them (*p*).

It is said (*q*) that, upon a suggestion of title, the Court of Queen's Bench, at any time while the conviction remains below, and has not been removed by *certiorari*, will grant a prohibition after conviction to stay the justice from proceeding upon it; but the objection must have

Objection of title, &c. being in question, when to be taken.

(*m*) *Pease v. Chaytor*, *supra*; *R. v. Pedler*, 5 N. R. 81; *R. v. Kayley*, 10 L. T. 339.

(*n*) *Pease v. Chaytor*, *supra*.

(*o*) *R. v. Nunneley*, El., Bl. & El. 852; 27 L. J., M. C. 260; see also *Backhouse v. Churchwardens of Bishopwearmouth*, 9 C. B., N. S. 315; 30 L. J., M. C. 118, deciding that a quaker falls within the rule; *R. v. Blackburn*, 32 L. J., M. C. 41, where, under the circumstances, the justices were held right in deciding that the defendant was

not acting *bond fide*; and *R. v. Huntsworth*, 33 L. J., M. C. 131, where they were held to be wrong; and *Pease v. Chaytor*, 1 B. & S. 658; 31 L. J., M. C. 1, where it was held that it sufficiently appeared on the declaration that the justices acted without jurisdiction. *R. v. Stimpson*, 32 L. J., M. C. 208.

(*p*) *R. v. Cridland*, 7 El. & Bl. 853; 27 L. J., M. C. 28.

(*q*) *Per Holt*, C. J., 2 Ld. Ray. 901. See Crown Office Rules, 1886, Nos. 81 & 82.

been raised by the defendant at the hearing ; in strictness, it should be taken in the first instance, before endeavouring to obtain a decision on the merits (*r*) ; it is not, however, too late to take it after the case has been heard and immediately before the justices give their decision (*s*), but it must be distinctly raised before the decision is actually pronounced (*t*).

Waiver of irregularity.

Any objection will be disposed of if both parties still consent to the justice proceeding in the case (*u*). A party cannot waive the objection and renew it when the decision is against him (*x*).

Res judicata.

There is another maxim of the law, "*nemo debet bis vexari pro una et eadem causa* ;" a maxim of general application to civil and criminal proceedings, to actions, orders, summary convictions and indictments (*y*) ; and another, more especially applicable to criminal matters, "*nemo debet bis puniri pro uno delicto*" (*z*). Consequently, at common law a former conviction or acquittal, whether on a criminal summary proceeding or an indictment, will be an answer to an information of a criminal

(*r*) *R. v. JJ. Salop*, 2 El. & El. 386 ; 29 L. J., M. C. 39 ; see *R. v. JJ. Leicester, Id.* 203 ; *Wakefield L. B. v. West Riding, &c. Railway Company*, L. R., 1 Q. B. 84 ; 35 L. J., M. C. 69.

(*s*) *Ex parte Mannering*, 31 *Id.* 153.

(*t*) *R. v. JJ. Salop, supra.*

(*u*) *R. v. Cheltenham Commissioners*, 1 Q. B. 467 ; 10 L. J., M. C. 99.

(*x*) *Turner v. Postmaster General*, 34 L. J., M. C. 10 ; and see *ante*, p. 109.

(*y*) For a fuller discussion of this maxim, see Broom's Legal Maxims, 6th ed. p. 316.

(*z*) In some cases depending on the construction of the statute under which the charge is made, the continuance of an offence is a new offence ; but in others, although the mischief continues, the legislature have not imposed successive penalties, but have treated one penalty

as sufficient for a continuance of it. Thus, on an information for not having a child vaccinated under 16 & 17 Vict. c 100, s. 2 (now repealed) it was held to be a good answer that the defendant had already been convicted of the same offence in respect of the same child, although it remained unvaccinated ; *Pilcher v. Stafford*, 4 B. & S. 775 ; 33 L. J., M. C. 113. But now a parent who has been fined under sect. 31 of 30 & 31 Vict. c. 84, for disobeying an order to have his child vaccinated, may be proceeded against from time to time as long as the child remains unvaccinated ; *Allen v. Worthy*, L. R. 5 Q. B. 163 ; 39 L. J., M. C. 36. A parent who has been fined under this section for disobedience to an order for the vaccination of his child cannot be again fined for disobedience to the same order. *R. v. JJ. Portsmouth*, [1892], 1 Q. B. 491.

nature before justices founded on the same facts. The true test to show that such previous conviction or acquittal is a bar, is whether the evidence necessary to support the second proceeding would have been sufficient to procure a legal conviction on the first (a). If, however, by reason of some defect in the record, either in the indictment, place of trial, process or the like, the accused was not lawfully liable to suffer judgment for the offence charged, the former proceeding will be no bar. The previous proceeding, if used as an answer, should have been a decision on the merits, and not in the nature of a mere nonsuit (b). In addition to the common law rule, there are many special statutory provisions making summary criminal proceedings a bar to any future ones. Thus, by 11 & 12 Vict. c. 43, s. 14, if the information be dismissed, the justices may, if they think fit, upon being required to do so, make an order of dismissal of the same, and give the defendant a certificate thereof, which certificate afterwards, upon being produced, shall, without further proof, be a bar to any subsequent information for the same matters against the same party. So by 24 & 25 Vict. c. 100, ss. 44, 45 (substituted for 9 Geo. 4, c. 31, s. 27), if the justices, on hearing certain charges of assault and battery "upon the merits," where preferred by or on behalf of the party aggrieved, deem it not to be proved or find it to have

(a) Coleridge, J., in *R. v. Drury*, 3 C. & K. 193; 18 L. J., M. C. 189; *R. v. Machen*, 14 Q. B. 74; 18 L. J., M. C. 213; *R. v. Herrington*, 3 N. R. 468; and see Arch. Cr. Pl.; *Wemyss v. Hopkins*, L. R., 10 Q. B. 378; 44 L. J., M. C. 101; 33 L. T. 9; 23 W. R. 691, where the defendant was first summarily convicted under the general Highway Act, 5 & 6 Will. 4, c. 50, for striking a horse ridden by the respondent, and causing hurt and damage to the respondent, and was afterwards convicted, under 24 & 25 Vict. c. 100, for an assault in respect of the same matter; and it was held that the second conviction

was illegal.

(b) *R. v. Herrington*, 3 N. R. 468; 12 W. R. 420; *R. v. Machen*, 14 Q. B. 74. L. was charged with night poaching under 9 Geo. 4, c. 69, and in course of cross-examination of prosecutor's witnesses, the justices considered he had been illegally arrested, and discharged him. L. was again summoned for the same offence on the same facts, when the justices held that they had no jurisdiction, as the former case was *res judicata*. It was held that the justices had rightly decided. *R. v. Brackenridge*, 48 J. P. 293.

been justified, or so trifling as not to merit any punishment, and accordingly dismiss the complaint, they are forthwith to make out a certificate of such dismissal and deliver it to the party against whom the complaint was preferred, and such certificate, or a conviction followed by a fulfilment of the sentence, is expressly declared to be a bar to all further proceedings, civil or criminal, for the same cause (c). And where the plaintiff, having served a summons for an assault, gave notice to the defendant that it was abandoned, it was held, that the defendant, on applying for it, was entitled to a certificate of dismissal, and that the dismissal was itself a "hearing" within the above 27th section (d). Even if the second charge be differently framed, but based on the same facts, it will be answered by the defence of *autrefois acquit* or *autrefois convict*. Thus, a certificate of dismissal of a charge of assault is a bar to an indictment for unlawful wounding where the transaction is the same (e). The objection of *res judicata* must be taken at the hearing before the magistrates, and not reserved as a ground for quashing the conviction or order after it has been made (f).

A decision of a summary Court on an incidental matter

(c) These and similar provisions in 24 & 25 Vict. cc. 96, 97, make summary convictions under them a bar to other proceedings. See *Tunnicliffe v. Tedd*, 5 C. B. 558; *R. v. Robinson*, 12 A. & E. 672; the ratio decidendi in this case is disputed in *Hancock v. Somes*, 1 El. & El. 795; 28 L. J., M. C. 196. In *Reed v. Nutt*, 24 Q. B. D. 669; 58 L. J., M. C., it was held that there had not been a hearing upon the merits, and that the magistrate had no jurisdiction to grant the certificate, and that the certificate was therefore no bar under 24 & 25 Vict. c. 100, s. 45 to a subsequent action in the county court to recover damages in respect of the same assault.

(d) *Vaughton v. Bradshaw*, 9 C.

B., N. S. 103; 30 L. J., C. P. 93. The granting of the certificate is a ministerial act consequent on the dismissal. The application for it need not be made in the presence of the other party, and, as it seems, it may be made at any time, the word "forthwith" in the statute meaning forthwith on application for it, and not forthwith on dismissal of the information. *Hancock v. Somes*, 1 El. & El. 795; 28 L. J., M. C. 196; *Costar v. Hetherington*, 1 El. & El. 802; 28 L. J., M. C. 198. As to ministerial acts, see *ante*, p. 21, n. (m).

(e) *R. v. Elrington*, 31 L. J., M. C. 14.

(f) *R. v. Herrington*, 12 W. R. 40; 3 N. R. 468; and see *Toft v. Rayner*, 5 C. B. 162.

between parties is not conclusive in another proceeding between the same parties in a similar Court (*g*).

Upon a fresh summons the former adjudication is sufficiently proved by an entry in the justice's note book, and when so proved is binding and conclusive (*h*).

The defendant should be furnished with a copy of the conviction, if it be necessary to his defence against an action or information for the same offence. And where a magistrate refused to grant a copy, which was required for that purpose, he was compelled to pay his own costs of returning the conviction into the Queen's Bench on a *certiorari*, which the defendant was under the necessity of suing out, as the only means of procuring a copy (*i*).

It does not often happen that the magistrates, when they acquit the party, are called upon to make a record of their proceedings (*k*). But if they were so called upon by writ of *certiorari*, and their return disclosed a *prima facie* case upon which the defendant might have been found guilty, nevertheless, the Queen's Bench Division, upon the principle already mentioned of considering the magistrates in the situation of a jury, would not interfere with their judgment. Thus, where a proceeding on 7 Geo. 2, c. 19 had been instituted for using sulphur for drying hops, to a writ of *certiorari*, which had been issued by the prosecutor in order that the magistrates might return a special case, which it was expected they would do,—they thought proper to make a return, setting out the deposition of a witness to the fact of the defendant having thrown half a pound of sulphur upon a charcoal fire then using for drying hops; “but because the informer, J. L., does not produce before us any other evidence against the said defendant, and because all and singular the premises being heard and fully understood by us the said justices, it manifestly appears to

(*g*) *R. v. Hutchings*, 6 Q. B. D. 17.
300; 50 L. J., M. C. 35.

(*h*) *R. v. Hutchings*, 6 Q. B. D.
300; 49 L. J., M. C. 64.

(*i*) *R. v. Midlam*, 3 Burr. 1721;
and see *post*, Part III., Chapter I.
(*k*) See Part III., Chapter I.

us that the said defendant ought not to be convicted of the premises above laid to his charge ; therefore it is considered that he be acquitted, and he is acquitted." On this record being returned to the *certiorari*, the Court said the evidence given was entirely and exclusively for the justices below, who were placed in the situation of a jury ; and, as they had acquitted the defendant, the Court could not substitute themselves in the place of the justices acting as jurymen, and convict him. They could not judge of the credit due to the witnesses, whom they did not hear examined. They could only look to the form of the conviction, and see that the defendant, if convicted, had been convicted on legal evidence. That, on this return, they must consider that the magistrates had determined on the facts, and not on the law as distinguished from the facts (*l*).

A more difficult matter for consideration is, how far a former civil proceeding is a bar to a criminal one ; for a man may at the same time render himself liable to both civil and criminal proceedings. Thus, at common law (apart from statutory provision) a person may be exposed for one and the same act to an action for damages to the injured person, and a criminal proceeding for the breach of the peace (*m*) ; and sometimes statutes specially provide (*n*), that an offender shall be liable both to civil and criminal proceedings. At the same time it is right and is the practice to take the one matter into consideration in proceeding on the other ; for instance, when an action is pending judgment will not be given on an information for an assault (*o*). Technically speaking, in such a case there is no estoppel on the justices from proceeding, unless, perhaps, where the proceeding before them, though nominally criminal, is actually for the vindication of the party injured rather than for the ends of public justice. But,

(*l*) *R. v. Reason*, 6 T. R. 376.

(*m*) Grier, J., 14 How. U. S. R.
20.

(*n*) 50 & 51 Vict. c. 28, s. 19,

as to trade marks.

(*o*) *R. v. Mahon*, 4 A. & E.
575.

without entering at length into this question, the safe practical rule for the justices to act on would seem to be this, when it appears that civil proceedings are pending in respect of the same matter, to dismiss the complaint or pass a nominal sentence, unless there has been an outrage on public order; or unless by statutory provision (as in the case of trade marks) the civil and criminal proceedings are not to interfere with each other. Should the second proceeding be merely to indemnify the complainant from an alleged wrong, a previous civil decision as to the same matter will be conclusive; thus, judgment against a servant in the County Court for a wrongful dismissal, is an answer to an application to justices to enforce payment of wages^(p).

Courts of summary jurisdiction are now for certain purposes to be deemed to be courts of civil jurisdiction^(q).

There is probably no maxim known to our law of more *Mens rea*. beneficial operation than that which requires a criminal intent in order to fix a criminal responsibility. It is generally expressed in the words, "*actus non facit reum, nisi mens sit rea*," and while it is of very limited application in civil proceedings, it is almost universally applied to those which are of a criminal nature^(r). The test of

(p) *Routledge v. Hislop*, 29 L. J., M. C. 90; and see *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

(q) Summary Jurisdiction Act, 1879, and see Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90). In a case under this Act, it was proved that a workman was dismissed for neglecting his work, and his employers refused to pay him wages in lieu of notice, and that he thereupon took proceedings against them in the County Court, and recovered a verdict, although at the hearing evidence was produced to show that he had been guilty of negligence. The employers subsequently took proceedings against the workman before

justices for wrongfully and negligently damaging their materials, and the justices ordered him to pay a sum of money. The Queen's Bench Division held that the justices had power to make such an order, inasmuch as the question raised before the justices was never brought before the County Court judge, and the employers were not bound to raise it before him. *Hindley v. Haslam*, 3 Q. B. D. 81.

(r) An offence implies intention in the offender; and "wilfully" is, in general, equivalent to "knowingly and fraudulently;" *per Erle, J.*, in *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 85; and see *per Lord Campbell*, C. J. *Id.* 90.

its application, therefore, in general depends on the question, what is the character of the complaint, is it of a civil or a criminal nature? This was the view taken by the Court of Queen's Bench with regard to an information for sending dangerous goods by railway, which under the Railway Act before the Court exposed the "senders" to a penalty of 10*l.*, enforceable against them as "offenders" by imprisonment for three months; and the act was construed as meaning, if parties *knowingly* sent the goods (*s*), *Erle*, J., saying, "There is no doubt in the case, if it is a criminal proceeding. . . . I had rather thought, that the enactment was in the nature of a protective clause, providing, that if any one sent destructive articles by the railway, he should be liable. . . . The senders clearly for every purpose, except criminal proceedings, warrant that there was no aquafortis, &c., in the parcel; but if this proceeding is a criminal one, which I do not deny, I cannot say that they are liable, unless they had knowledge of the dangerous nature of the goods." And the same construction was put on the old statute relating to the possession of naval stores (*t*).

Where there must be a *mens rea* to constitute an offence, an honest claim of right, however absurd, will frustrate a summary conviction; but where the absence of *mens rea* is not necessarily a defence, the person who sets up a claim of right must show some ground for its assertion, and if he fail to do so, is liable to be convicted of the offence charged against him (*u*).

As a general rule, no penal consequences are incurred where there has been no personal neglect or default, and a *mens rea* is essential to an offence under a penal enactment, unless a contrary intention appears by express language or necessary inference (*x*).

(*s*) *Hearne v. Garton and Another*, 2 El. & El. 66; 28 L. J., M. C. 216; see Index, verb. "knowledge."

(*t*) *R. v. Sleep*, 30 L. J., M. C.

170.

(*u*) *Watkins v. Major*, L. R., 10 C. P. 662; 44 L. J., M. C. 164.

(*x*) *Dickinson v. Fletcher*, L. R., 9 C. P. 1; 43 L. J., M. C. 25;

Stephen, J., in giving judgment in *Cundy v. Lecocq* (y) said: "I do not think that the maxim as to the *mens rea* has so wide an application as it is sometimes considered to have. In old times, and as applicable to the common law, and to earlier statutes, the maxim may have been of general application; but a difference has arisen owing to the greater precision of modern statutes. It is impossible now to apply the maxim generally to all statutes, and it is necessary to look at the object of each act to see whether and how far knowledge is of the essence of the offence charged."

The increase of statutes constituting new offences or altering old ones, and often prescribing specific methods of procedure, has on many occasions raised very difficult questions as to the nature and number of the remedies available. Cumulative
remedy.

Wherever the law simply declares an act to be unlawful the doer of it may be punished by indictment, but where the legislature creates an offence and imposes only a penalty for committing it, there no indictment lies, but the penalty may be recovered (z). So if a statute create a new obligation and a new remedy, the remedy pointed out by the statute must be followed (a); or, in the words of Lord *Tenterden*, "Where an act creates an obligation, and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner" (b). These questions generally arise in such a form as to have no bearing on our present subject; as, for instance, where the contention is, whether an action will lie in addition to the remedy pointed out by the particular statute (c). No difficulty analogous to this can

Aberdare Local Board v. Hammett, L. R., 10 Q. B. 162; 44 L. J., M. C. 49.

(y) 13 Q. B. D. 307; 53 L. J., M. C. 125.

(z) Per *Pollock*, C. B., in *Fox v. The Queen*, 29 L. J., M. C. 54.

(a) *Mayor of Blackburn v. Parkinson*, 1 El. & El. 71; 28 L. J., M. C.

7; *Vestry of St. Pancras v. Batterbury*, 2 C. B., N. S. 477; 26 L. J., C. P. 243.

(b) *Doe v. Bridges*, 1 B. & A. D. 847; and see *Guardians of Hertford Union v. Kimpton*, 11 Exch. 295; 25 L. J., M. C. 41.

(c) See upon this point *Timms v. Williams*, 3 Q. B. 413; *Alton v.*

of course arise as to a summary conviction, inasmuch as the jurisdiction must always exist by express statutory provision. But sometimes it happens, that after an offence has been created and summary jurisdiction over it given by a statute, a second statute is passed relating to the same matter. Upon this point, it has been held, that if a later statute again describes an offence created by a former one, and affixes a different punishment varying the procedure and giving an appeal when there was no appeal before, proceedings must be taken under the later statute, which operates by way of substitution and not cumulatively (*d*). The same result would, it seems, follow an alteration in the procedure and punishment, without reference to the question of appeal.

Agreement
between
parties.

In strict law no agreement between the complainant and the accused can put an end to criminal proceedings, but it very often happens (as we have before said) that the proceedings, though technically of a criminal nature, are more for the benefit of the injured person than the vindication of public justice, and it is also frequently a difficult matter to decide whether they are criminal or civil.

Even if the proceeding be merely civil, and for the benefit of individuals, justices may disregard any agree-

Pike, 4 M. & G. 421; *Couch v. Steel*, 3 El. & Bl. 402; 23 L. J., Q. B. 121, 126; *S. C.*, *Sharpe v. Warren*, 6 Price, 131; *Reeves v. White*, 21 L. J., Q. B. 169; *Shepherd v. Hills*, 11 Exch. 55; 25 L. J., Exch. 6. See also *R. v. Trafford*, 4 El. & Bl. 122; *R. v. Ingham*, 21 L. J., M. C. 125; *The Attorney-General v. Radloff*, 23 Id. Exch. 240, 242; *Watkins v. Great Northern Railway Company*, 16 Q. B. 961; *Giles v. Hutt*, 3 Exch. 18; *Great Northern Railway Company v. Kennedy*, 4 Exch. 417; *Cutbill v. Kingdon*, 1 Exch. 494; *Novello v. Ludlow*, 21 L. J., C. P. 169; *Stone v. Marsh*, 6 B. & C. 551; *Kelsall v. Tyler*, 11 Exch. 513; 25 L. J., Exch. 153; *Barker v. Midland Railway Company*, 18

C. B. 46; 25 L. J., C. P. 184; 10 Jur. N. S. 172; *R. v. Crawshaw*, 30 L. J., M. C. 58, 64; *Vestry of St. Pancras v. Batterbury*, 2 C. B., N. S. 477; 26 L. J., C. P. 243; 25 & 26 Vict. c. 102, s. 77; 1 & 2 Will. 4, c. 32, s. 46.

(*d*) *Michell v. Brown*, 1 El. & El. 267; 28 L. J., M. C. 53, 55, in which Lord Campbell, C. J., said "If the later statute expressly altered the quality of the offence by making it a misdemeanor instead of a felony, or a felony instead of a misdemeanor, the offence could not be proceeded with under the earlier statute, and the same consequence seems to follow from altering the procedure and the punishment."

ment set up by way of defence, if it is not between all the parties interested. Thus, where a father of a bastard child had agreed to pay to the mother 5s. a week for its maintenance, and had then paid her 10*l.*, in consideration of which she agreed to release him from all further payments, it was held that this was no *bar* to the jurisdiction of a justice to make an order for the support of the child on her subsequent application, under 7 & 8 Vict. c. 101, as the statute was for the benefit of the child as well as of the mother; but that the justice ought to take it into consideration, together with the other circumstances, and then exercise his discretion as to making an order (*e*).

In a case, where the complainant at the time of entering the defendants' employ, deposited with them the sum of 5*l.*, which, together with any wages due, was agreed to be forfeited in case of any breach by him of the defendants' rules; and it was further agreed, that the defendants' manager was to be the sole judge of whether the defendants were entitled to retain the whole of the deposit money and wages due, and that his certificate of the cause of retention should be binding and conclusive evidence between the parties in all Courts of justice and before all stipendiary magistrates, and should bar the complainant of all right to recover under any circumstances the moneys so certified to be retained, it was held that the agreement was not illegal, and the complaint being substantially a civil proceeding, the manager's certificate that the deposit and wages had been forfeited was conclusive evidence of the fact, precluding the magistrate from making any further enquiry (*f*).

(*e*) *Follitt v. Koetzow*, 29 L. J., M. C. 128. *v. Bailey*, 3 Q. B. D. 217; 47 L. J. M. C. 3.

(*f*) *London Tramways Company*

SECT. 10.—*Evidence in reply.*

Evidence
in reply.

If the defendant has examined any witnesses, or given any evidence, other than as to his general character, the prosecutor or complainant may examine witnesses in reply (g).

Observations
in reply not
allowed.

The prosecutor or complainant, however, is not entitled to make any observations in reply upon the evidence given by the defendant, nor is the defendant entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply (g). The 28 Vict. c. 18, s. 2, which gives the prosecution a right of reply, does not apply to summary proceedings. When the case and evidence have been heard on both sides, it remains for the magistrate to convict the party, or to dismiss the information, according to his judgment upon the circumstances.

SECT. 11.—*Proceeding with second Information before disposing of first.*

Where there are two informations containing distinct charges, the justices cannot proceed with the second information before disposing of the first. A defendant was charged by two informations with two offences under sections 3 & 4 of the Indecent Advertisements Act, 1888, at the same time and place, the evidence being substantially the same in both cases. Upon the conclusion of the hearing of the first information the justices reserved their decision until they had heard the charge contained in the second information; and, having done so, proceeded to convict the defendant on both charges, and sentenced him to a separate term of imprisonment on each charge. It was held that the convictions must be quashed, inasmuch as the justices should have disposed of the charge contained in the first information before proceeding to deal with that contained in the second information (h).

(g) 11 & 12 Vict. c. 43, s. 14.

M. C. 134.

(h) *Hamilton v. Walker*, 61 L. J.,

SECT. 12.—*Dismissal of Complaint; Discharge from first Conviction.*

The general rule is, that if the charge is substantiated and no valid defence proved, the duty of the justices is to convict; whilst, if the case for the prosecution fail, or a valid defence is shown, it becomes their duty to dismiss the charge. This is so obvious, that it would not have been necessary to allude to it, but for the fact that sometimes the statute relating to the offence contains exceptional provisions on this point. Thus, 24 & 25 Vict. c. 100, enacts, that on certain charges of assault and battery, the justices may dismiss the complaint if they think the offence so trifling as not to merit punishment. Again, 24 & 25 Vict. cc. 96, 97, though they do not provide for the dismissal of informations, enact, that where a person is summarily convicted under their provisions, and it is a first conviction, the justice may discharge the offender on his making such satisfaction to the person grieved for damages and costs or either of them, as the justice shall direct.

Power to
discharge
accused
without
punishment.

It is enacted by the Summary Jurisdiction Act, 1879 (i), that—

“If upon the hearing of a charge for an offence punishable on summary conviction under this act, or under any other act, whether past or future, the court of summary jurisdiction think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—

- (1.) The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable; or,

(i) 42 & 43 Vict. c. 49, s. 16; Offenders Act, 1887 (50 & 51 Vict. c. 25).
and see the Probation of First

(2.) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable :

Provided that this section shall not apply to an adult convicted in pursuance of this act of an offence of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction."

Release upon
probation.

In any case in which a person *is convicted* of larceny or false pretences, or any other offence punishable with not more than two years imprisonment before any court (*j*), and no previous conviction is proved against him, if it appears to the court before whom he is so convicted that regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into any recognizance, with or without sureties, and during such period as the court may direct, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour (*k*).

Certificate of
dismissal.

By 11 & 12 Vict. c. 43, it is provided, that whenever the case is dismissed (unless it falls within sect. 35) it shall be lawful for the justices if they think fit, being required so to do, to make an order of dismissal, and give the defendant a certificate thereof (*l*). And in some other acts

(*j*) This includes a court of summary jurisdiction, s. 4.

(*k*) Probation of First Offenders

Act, 1887 (50 & 51 Vict. c. 25), see Appendix.

(*l*) It is discretionary with the

there are analogous provisions applying only to the particular statutes in which they are contained. Thus, 24 & 25 Vict. c. 100, provides, that when there is a dismissal under that act the justices shall make out and deliver to the person charged a certificate thereof (*m*).

Where a summons had been dismissed by justices and no certificate of dismissal had been required or given under s. 14 of 11 & 12 Vict. c. 43, it was held upon a fresh summons that the former adjudication was sufficiently proved by the entry in the justices' note-book, and when so proved was binding and conclusive (*n*).

As to costs, it is provided by 11 & 12 Vict. c. 43, s. 18, that in all cases of dismissal (not within sect. 35) the justices may order the complainant to pay the defendant such costs as seem to them reasonable, the amount to be specified in the order of dismissal, and recovered as penalties are recovered.

In default of distress the prosecutor or complainant may be committed for any time not exceeding one calendar month (*o*). Such committal, however, is subject to the scale of imprisonment provided by the Summary Jurisdiction Act, 1879 (*p*), and can only be made after judgment summons and proof of means of payment. There is no appeal against the dismissal of an information or complaint (*q*).

justices to grant or refuse this certificate. *R. v. Eardley*, 49 J. P. 551. It has been said that the certificate should not be given unless the information was dismissed on the merits. See *Foster v. Hall*, 33 J. P. 629.

(*m*) *Ante*, p. 156. On a charge of assault, if the complainant does not appear justices have no jurisdiction

to grant a certificate of dismissal. *Reed v. Nutt*, 24 Q. B. D. 669; 59 L. J., Q. B. 311.

(*n*) *R. v. Hutchings*, 6 Q. B. D. 800; 49 L. J., M. C. 64.

(*o*) 11 & 12 Vict. c. 43, s. 26.

(*p*) 42 & 43 Vict. c. 49, s. 5, *post*, Appendix.

(*q*) *R. v. JJ. London*, 25 Q. B. D. 357; 59 L. J., M. C. 146.

PART II.

OF THE CONVICTION.

CHAPTER I.

OF THE GENERAL FORM AND REQUISITE QUALITIES OF A CONVICTION.

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|------------------------------------|-----|---|-----|
| 1. <i>Definition</i> | 168 | 3. <i>Statutory Forms of Conviction</i> | 173 |
| <i>Matter of Record</i> | 168 | <i>Departure from</i> | 175 |
| 2. <i>Distinction between, and</i> | | 4. <i>General qualities of a Conviction</i> | 176 |
| <i>Orders</i> | 170 | 5. <i>Entirety of Conviction</i> | 181 |

Definition of
a conviction.

WE proceed, in the next place, to explain the form and requisites of the conviction itself, which may be described as a record, containing a memorial of the proceedings had under the authority of a penal statute before justices of the peace, or commissioners duly authorized to receive an information and proceed to judgment (a).

Record.

As the proceedings of justices of the peace by summary conviction are matter of record (b), it is a part of their

(a) 1 Salk. 377 ; Bosc. 7.
(b) Dalt. c. 2, s. 4. According to Lord C. J. Holt, in the case of *The College of Physicians*, 1 Salk. 200, wherever there is a jurisdiction created with power to fine and imprison, that is a Court of Record, and what is there done is matter of record, and so in 8 Co. 60, 38. Lord C. J. De Grey, however (*Miller v. Seare*, 2 Bl. Rep. 1146), observes that this position cannot be universally true. But the reasons assigned by Dalton, c. 2. s. 4, for considering the acts of justices of peace on penal statutes as mat-

ters of record, seem to justify the describing them as such. That penal convictions have always been considered as records appears from the uniform and, as it should seem, indispensable practice (before the Act of 4 Geo. 2, c. 26), which required them, when filed, to be in Latin, as all records then necessarily were by the statute of Edw. 3. In the case of *R. v. Chaveney*, (anno 11 Geo. 1), 2 Lord Raym. 1368, a conviction for swearing was quashed because it was in English. Lord Holt, indeed, in another case (*R. v. Lomas*, Comb. 289 ; Skin.

duty, upon every conviction, to record the proceedings in a formal shape, certifying them under their hand and seal (c), which is the only regular mode of authenticating them as their records (d). This is also necessary for the purpose of having convictions returned and filed among the records at the general quarter sessions of the peace, which ought to be done in all cases (e).

The summary jurisdiction of magistrates, though their proceedings be matter of record, is not however comprehended under the general denomination of the jurisdiction of the Queen's Courts; and therefore it has been resolved that the provisions of acts of parliament, which speak of

562) said, that he saw no necessity why a conviction for keeping a private still should be in Latin any more than an order of bastardy. The practice, however, was taken for granted in the case of *R. v. Lloyd*, 2 Str. 999, and referred to as a criterion to distinguish orders from convictions. It is further confirmed by 11 & 12 Vict. c. 43, s. 14, which requires them to be filed among the records of the general quarter sessions of the peace. The doctrine that magistrates acting judicially are judges of record was fully recognized in *Basten v. Carew*, 3 B. & C. 649; 5 D. & R. 558; 2 D. & R. Mag. Ca. 563, S. C. See further on this point, *Re Hammond*, 9 Q. B. 96; *Chaney v. Payne*, 1 Id. 724; *Charter v. Greame*, 13 Id. 223; *R. v. Yeoveley*, 8 A. & E. 806, 810. Formerly, also, convictions were drawn up on parchment, which was necessary in the case of records (Co. Litt. 260 a; Termes de la Ley, tit. "Record," p. 572 (edit 1685); *Re Hammond*, 9 Q. B. 96, 99; *R. v. Yeoveley*, 8 A. & E. 810, 819; *Charter v. Greame*, *supra*), but now they may be on parchment or paper; 11 & 12 Vict. c. 43, s. 17: so may coroners' inquisitions, unless they be of murder or manslaughter, in which cases they must still be on parchment; 50 & 51 Vict. c. 71, s. 18.

(c) 11 & 12 Vict. c. 43, s. 14. In

R. v. Glossop, Easter Term, 2 Geo. 4, where a *certiorari* was directed to justices to certify proceedings at sessions under their hands and seals, and the return omitted their seals, the Court gave leave to amend the return in that respect, and sent it back for that purpose; Mr. Dowling's MS. An adjudication by magistrates of compensation under the Lands Clauses Consolidation Act, 1845, is in the nature of an award rather than of an order, and therefore the justices need not make it in writing, but may give their decision verbally; *R. v. Combe*, 32 L. J., M. C. 67.

(d) See *Basten v. Carew*, 3 B. & C. 649; Bosc. 11.

(e) 11 & 12 Vict. c. 43, s. 14; and see *R. v. Eaton*, 2 T. R. 285. Even before this statute, all convictions ought in point of strictness to have been returned and filed at the sessions, more particularly in those cases where any part of the penalty went to the Crown, in order that such fines might be estreated into the Exchequer. See *post*, Part 3, Chap. 1, and also *post*, "Penalties," as to the mode of enforcing fines and forfeitures. In *R. v. Bach*, 1 Str. 137, it was held that there must be a formal conviction upon the former statute relating to hawkers and pedlers (8 & 9 Will. 3, c. 25), though the statute mentioned nothing of it.

proceedings by plaint or information in any of her Majesty's Courts, do not extend to proceedings of a summary nature before justices of the peace (*f*).

Distinction
between
orders and
convictions.

This seems a proper place to say a few words upon the distinction between orders and convictions, with a view of attempting some determinate criterion of separation between them (*g*).

In truth, it is not easy to fix any rule for distinguishing in the abstract between what things are the subject of *orders*, and what of *convictions*. Practice seems chiefly to have been consulted in the distinction. Before the statute of 4 Geo. 2, c. 26, convictions were always recorded in Latin, whereas orders were returned in English; and we find this circumstance referred to as a criterion used by the Court in determining that a particular instrument, viz., a judgment of removal of a clerk of the peace by the justices in sessions, should be considered as an order, and not as a conviction, and consequently as not requiring the evidence to be set out (*h*).

It would be beside the present purpose to inquire into the grounds of this distinction; it is sufficient to observe that the Courts have been more strict in construing convictions than orders (*i*): that formerly, when it was necessary to allege in convictions that the defendant had been summoned, and to set forth the evidence and to state that

(*f*) *R. v. Steventon*, 2 East, 374; *R. v. Crisp*, 1 B. & Ald. 282.

(*g*) As to non-contentious orders, see *R. v. Lord Newborough*, 38 L. J., M. C. 129, from which it appears that an order by justices on a county treasurer for the payment of the expenses of special constables, is an order in the nature of a direction to the officer of the justices and need not show on the face of it that the justices signing it had jurisdiction to make it.

(*h*) *R. v. Lloyd*, 2 Str. 996.

(*i*) One reason assigned *arguendo* in *R. v. JJ. Radnorshire*, 9 Dowl. 90, 93, was, that as orders must

be drawn up before they are acted upon, and convictions may be drawn up afterwards, the Courts were more liberal in their construction of the former than of the latter; this reason no longer exists, and in modern times our judges have emancipated themselves from artificial rules of construction founded on technical distinctions, and seek to apply the same reasonable interpretation to all documents brought before them. See *post*. See also *Lindsay v. Leigh*, 11 Q. B. 465; *Bradford Union v. Clerk of the Peace for Wills*, L. R., 3 Q. B. 604.

it had been taken in his presence and upon oath, a different rule prevailed with regard to orders. In these the evidence was not set forth (*k*), and if jurisdiction appeared the Courts would intend that the justices had proceeded regularly, that the party had been summoned (*l*), and the evidence taken in his presence (*m*), upon oath (*n*). Two other distinctions (one of which still exists) which are independent of the form or construction of the documents, should be noticed, namely, first, that an order formerly must have been drawn up before it was acted upon, but a conviction might have been drawn up after it had been acted upon (*o*); and secondly, that an order may be good in part and bad for the residue (*p*), whereas a conviction is an entire judgment and indivisible: if any material part be faulty, it vitiates the whole (*q*). The first of these distinctions, however, no longer exists, except in a few cases (*r*), as by 11 & 12 Vict. c. 43, the justices are required, both in the case of a conviction and an order, to make a minute or memorandum at the time and afterwards to draw them up in proper form under their hands and seals.

Orders of bastardy, as the name imports, have always been considered to belong to the class of orders; and therefore they did not contain any allegation of the defendant's presence during the examination (*s*). Lord *Holt*, indeed, declared upon one occasion, that he could not see any reason for the distinction between orders of bastardy and

(*k*) *R. v. Lloyd*, *supra*.

(*l*) *R. v. Venables*, 2 Ld. Raym. 1405. See *R. v. Clayton*, 3 East, 58, and *Labalmondiere v. Frost*, 1 El. & El. 527; 28 L. J., M. C. 155.

(*m*) Burn's Justice, tit. "Bastard."

(*n*) See *Ormerod v. Chadwick*, 16 M. & W. 382.

(*o*) See *R. v. JJ. Radnorshire*, 9 Dowl. 93.

(*p*) *R. v. Maulden*, 1 M. & R. M. C. 385; *R. v. Robinson*, 17 Q. B. 466, 471; *R. v. Green and*

others, 20 L. J., M. C. 168, and the cases therein cited.

(*q*) *R. v. Catherall*, 2 Str. 900; 1 T. R. 249, *post*. By consent, however, it seems that a conviction may be set aside as to part of the judgment; *R. v. Hale*, Cowp. 728.

(*r*) See exceptions, sect. 35 of 11 & 12 Vict. c. 43.

(*s*) 1 Burn's Justice, tit. "Bastard," and the cases there cited and commented on. See *R. v. Upton Gray*, Cald. 308; 1 Bott, 482.

convictions (*t*). However, the words of the statute 18 Eliz. c. 3, which directed the justices to *take order* for the keeping of the bastard child, &c., as well as the nature of the proceeding, which was more for the purpose of indemnity to the parish than of punishment for an offence, may appear to account for the uniform practice in treating these as of a different class from penal convictions.

In a case, where an order in bastardy was held to be invalid, for omitting to state that it was made within forty days after service of the summons upon the putative father, according to the stat. 7 & 8 Vict. c. 101, s. 4, *Patteson, J.*, said: "The inclination of the Court of late has been to treat orders of a final nature like the present more as convictions than as orders. I do not mean to say, that an order in bastardy is to be considered for all purposes as a conviction, but I do not quite see how an order fixing the party as the putative father of a bastard, and compelling him to pay the costs of its maintenance, differs materially from a conviction" (*u*).

The only criterion afforded by the cases (*x*), for distinguishing when penal proceedings are to be considered as orders, and when as convictions, is that alluded to by Lord *Hardwicke*, viz., whether they be so denominated by the statute (*y*).

The practical result of the distinction was thus pointed out by Mr. Justice *Williams* in the case of *The Queen against The Justices of Radnorshire* (*z*):—"Admitting the general rule, which is confirmed by many cases, that a conviction should be construed strictly and an order liberally, the value of that rule is greatly diminished by

(*t*) *R. v. Lomas*, Comb. 289; and see *R. v. Austin*, 8 Mod. 309.

(*u*) *R. v. Rose and another*, 3 D. & L. 359; and see *R. v. JJ. Cheshire*, 3 D. & L. 337; 15 L. J., M. C. 3, and *Id.* 4, n. (1).

(*x*) *R. v. Lloyd*, 2 Str. 996; *R. v. Rabbits and another*, 6 D. & R. 341; 3 D. & R. Mag. Ca. 269; *Basten v. Carew*, 3 B. & C. 649;

5 D. & R. 558; 2 D. & R. Mag. Ca. 563.

(*y*) *R. v. Bissax*, temp. 29 & 30 Geo. 2.

(*z*) 9 Dowl. 98. See further upon this subject, *Ormerod v. Chadwick*, 16 M. & W. 367; *R. v. Inhabitants of Stainforth*, 11 Q. B. 66, 75; *R. v. Preston*, 12 Q. B. 816; 3 Burn's Justice, tit. "Orders," p. 1108.

the difficulty of applying it to each particular case. I much doubt whether upon examination there will be found any rule of law which prescribes, or even allows language to be forced from its ordinary import and fair meaning to support one instrument, or to invalidate the other. Since the case of *The King v. Hulcott* (a), which has been recognized in many subsequent and recent decisions, it may be questioned whether any intelligible distinction exists at all" (b).

In order to simplify the task of drawing up convictions, many of the modern penal acts previously to the passing of the stat. 11 & 12 Vict. c. 43, provided certain compendious forms, which, though given as models, were for the most part directory only (c), and intended to assist the magistrate in the performance of his duty; there being usually some such words as, "that the justice be authorized or empowered to draw up the conviction *in the form or to the effect* following, that is to say," &c. In some cases, however, the form was peremptorily prescribed, and must have been exactly followed.

By 11 & 12 Vict. c. 43, s. 17, it was enacted, that "it shall be lawful" for the justices to draw up their conviction or order in such one of the forms in the schedule as should be applicable to the case or "to the like effect" (d). This enactment is now replaced by the Summary Jurisdiction Rules, 1886, and the forms in the schedule to such rules (e)

(a) 6 T. R. 583.

(b) The learned judge's remarks were made with reference to an order of a final nature (for assisting in the fraudulent removal of goods) subjecting the party to a penalty, and the real distinction may be not between that class of orders and convictions, but between interlocutory orders, e.g. for the payment of money, which are to be enforced, in case of disobedience, by summons, enquiry, conviction and warrant, and convictions immediately interfering with rights secured by the general law of the land, from which

they materially and obviously differ; *R. v. Preston*, 12 Q. B. 816, 825; *R. v. Stainforth*, 11 Q. B. 66, 75.

(c) As to the distinction between essential provisions in statutes and such as are merely directory, see *ante*, p. 40, n. (d); as examples and variance not material, though words "or to the like effect" omitted: *Bacon v. Ashton*, 5 Dowl. 95; *Smith v. Wedderburne*, 4 D. & L. 297.

(d) See 11 & 12 Vict. c. 43.

(e) The whole of the form is set forth, and the several parts are considered, in the third chapter, *post*, p. 263.

The forms of convictions referred to contain simply the charge adjudicated upon, and the judgment of forfeiture or corporeal punishment and the disposition of the penalty, if pecuniary (*f*). It is therefore much shorter and less open to objections than the general form previously in use under 3 Geo. 4, c. 23 (now repealed (*g*)), which consisted of the following parts:—1. The information. 2. The summons and appearance or default of the defendant; with his confession or denial and defence. 3. The evidence. 4. The adjudication.

In the use of statutory forms in general, it will be expedient to attend to the following points, which will be more fully illustrated in the sequel; *first*, that where a blank is left for inserting the offence, the same accuracy is required in the description of it as in other cases (*h*); *secondly*, that although, as is often the case, the act directs, "that no conviction under this act shall be set aside for want of form, or through the mistake of any fact, circumstance or other matter, provided the material facts alleged be proved;" yet, notwithstanding these or the like words, every material fact must be alleged, and the omission, if any, is not aided by reference to such clause (*i*).

By the Summary Jurisdiction Act, 1879 (*k*), the description of any offence in the words of the act, or any order, bye-law, regulation, or other document creating the offence, or in similar words is to be sufficient in law, and by 12 & 13 Vict. c. 45 (General and Quarter Sessions Procedure Act), s. 7, if any objection is made on account of any omission or mistake in the drawing up of an order or judgment (*l*) by justices, and it is shown to the satisfaction of the Court that sufficient grounds were in proof before the justices to have authorized the drawing up thereof free from the said omission or mistake, it may be amended. *Thirdly*, if any

1. (*f*) See *post*, Chapter III., Sect.

(*g*) By 11 & 12 Vict. c. 43, s. 36.

(*h*) *R. v. Hazell*, 13 East, 139.

(*i*) *R. v. Jukes*, 8 T. R. 536.

(*k*) 42 & 43 Vict. c. 49, s. 39.

(*l*) It seems that a conviction comes within this term; see *post*, "Appeal" and "Certiorari."

particular form be prescribed as indispensably necessary, that must be strictly complied with (*m*); but if the act only declares that the magistrate may draw up the conviction *in the form or to the effect* there exemplified, then, provided the conviction contains everything required by the form given, it will not be vitiated by unnecessarily stating more than is required. Thus, on 31 Geo. 3, c. 21, which by sect. 4 directed the conviction to be drawn up according to a form there specified, *or to the effect thereof*, the magistrates having, besides all the requisite particulars, unnecessarily inserted what was not required by the specified form, viz. the information, summons, appearance and names of the witnesses, but not the evidence; it was objected, that the conviction was neither good at common law, for want of setting out the evidence,—nor by the statute, as it did not strictly follow the form there directed; but the objection was overruled: because, it was held, that, as the conviction contained all that the form required, it was not invalidated by stating what was unnecessary (*n*).

Superfluous facts.

This last observation leads us to take notice of a general maxim applicable to convictions in common with all other legal forms, viz. that any defect in the manner of stating that which is in itself surplusage, and might be omitted altogether, does not vitiate the rest which is sound (*o*).

Surplusage in general.

Under this article may also be noticed, that an impossible or incongruous date, if the conviction be complete without it, may be rejected as surplusage, and will not hurt (*p*).

Impossible date.

Fourthly. In general it is sufficient, as it is safer, to follow the statutory form (*q*), and where it was as follows,—

Departure from statutory form.

(*m*) *R. v. Jefferies*, 4 T. R. 769, per Lord Kenyon.

(*n*) *R. v. Jefferies*, 4 T. R. 768; and see *R. v. Priest*, 6 T. R. 539; *Charter v. Greame*, 13 Q. B. 227; *Stamp v. Sweetland*, 8 Q. B. 23; *Attorney-General v. Le Revert*, 6 M. & W. 405.

(*o*) *R. v. Hall*, 1 T. R. 320; *R. v. Drake*, 2 Sh. 489; and *R. v. Huntley*, 29 L. J., M. C. 70.

(*p*) *R. v. Picton*, 2 East, 196.

(*q*) *Wray v. Toke*, 12 Q. B. 492; *Stamp v. Sweetland*, 8 Q. B. 22; *R. v. Wilcock*, 7 Q. B. 333; *Barnes v. White*, 1 C. B. 192.

"the defendant is convicted before, &c., for that he, &c. [*here state the offence proved*]," it was held unnecessary to state whether it was proved by view, confession, or witnesses, although the act gave the justice power to convict only on view, confession, or the oath of a witness (*r*).

General
qualities of a
conviction.

The particular rules applicable to the distinct parts of a conviction, and to the certainty required in the framing of it, will be more fully explained in a subsequent chapter (*s*), but it may be expedient to notice in this place certain rules relating generally to its form and qualities.

A conviction ought to be in words and figures at length.

Judgment in
present tense.

The judgment itself, however (as in the general form given in the schedule to the Summary Jurisdiction Rules, 1886, is properly to be recorded in the present tense, agreeably to what is laid down by Lord C. J. *Hale* as a rule, in stating the proceedings of all inferior Courts, viz., that the acts of the Court (by which is probably understood the judgment) ought to be in the present tense, but the acts of the parties may be in the past, as *venit et protulit hic in curiâ quandam querelam suam* (*t*).

General quali-
ties.

The general qualities of a conviction in substance are, first, that it be full and correct; and, secondly, as the whole jurisdiction in summary proceedings is founded upon and solely derived from special acts of parliament, it is fundamentally required, in a conviction for any offence, that the directions of the particular statute relative to that offence should appear upon the face of it to have been substantially complied with; both as regards the subject-matter of the offence being clearly brought within the meaning of the act, and also the final judgment (*u*). And if the charge falls short of the necessary legal description of the offence, the omission is not cured by any allegations of its being

(*r*) *Nixon v. Nanney*, 1 Q. B. 747; and see *R. v. Jones*, 12 A. & E. 684, and *R. v. Recorder of King's Lynn*, 3 D. & L. 725; 15 L. J., M. C. 98.

(*s*) *Post*, Chapter III.

(*t*) *Hall v. Clarke*, 1 Mod. 81.

(*u*) *Jones*, 139, 170; *Cole's case*, Jenkins, 174; Show. 48; *R. v. Llewellyn*, Comb. 439.

done *unlawfully or fraudulently*, or the like ; or by stating that it was *against the form of the statute* (v) ; for the last allegation is no more than a legal inference, which must be supported by the premises (x).

Another indispensable property of a conviction is *certainty*. But as there will be occasion to illustrate this more particularly afterwards, it may suffice at present to observe, that the same rule holds true with equal strictness in convictions as in indictments, viz., that the charge should be positive and certain, in order that the defendant may be protected from a second accusation for the same fact (y) ; and in order also that the judgment may appear appropriate to the offence (z). An offence therefore cannot be charged *disjunctively*, or in the alternative, in a conviction, though it may perhaps be so in an order (a). Thus, where an information on 48 Geo. 3, c. 143, alleged that the defendant sold beer *or* ale, without an excise licence, the Court held it bad, and quashed the conviction, which showed that the defendant had sold ale only (b). So where a defendant was convicted on the Smuggling Act (6 Geo. 4, c. 108), s. 49, for being on board a boat liable to forfeiture by sect. 3, for having casks attached thereto, "of the description used, *or* intended to be used,

(v) *R. v. Jukes*, 8 T. R. 536 ; *R. v. Jarvis*, 1 Burr. 148 ; see *Attorney-General v. Le Revert*, 6 M. & W. 405 ; see *post*, p. 180, n. (n).

(x) *Anon.* Dy. 363 ; *Colborne v. Stockdale*, 1 Stra. 493 ; and see *Ex parte Aldridge*, 4 D. & R. 83 ; 2 D. & R. Mag. Ca. 170 ; *Re Greenwood*, 2 El. & Bl. 952 ; 23 L. J., M. C. 38, S. C. ; *Fletcher v. Calthrop*, 6 Q. B. 880, 889 ; *R. v. Lewis*, 8 Ad. & E. 888 ; *R. v. Martin*, 8 Ad. & E. 481, 486 ; *R. v. Seward*, 1 Id. 706 ; *R. v. Rowlands and others*, 17 Q. B. 671 ; 21 L. J., M. C. 81 ; see 12 & 13 Vict. c. 45, s. 7. So the word "duly" is of no avail, except in the description of mere inducement ; see *R. v. Bidwell*, 1 Den. C. C. 222 ;

R. v. Keighley, 8 Q. B. 877 ; 15 L. J., M. C. 102.

(y) 2 Stra. 900.

(z) *Vide* 2 Hawk. C. P. c. 25, s. 59 (8th ed. by Curwood). There were formerly also two other reasons which do not now apply, namely, that the defendant might see by the information (afterwards set out in the conviction) how to direct his defence, and that the evidence (also set out in the conviction) might be seen by the Court to support the charge.

(a) *R. v. Middlehurst*, 1 Burr. 399 ; 1 Salk. 372 ; 2 Hawk. c. 25, s. 59.

(b) *R. v. North*, 6 D. & R. 143.

for the smuggling of spirits," the Court there also quashed the conviction for duplicity and uncertainty (c).

Where a statute or bye-law creates two distinct offences, and provides the same penalty for both, an information and conviction stating the offence in the alternative, as contrary to the statute (or bye-law) are insufficient (d).

Intendment.

Another maxim is, that all the facts necessary to support the proceeding be expressly alleged, and not left to be gathered by inference or intendment. For example, in a conviction for having concealed brewing vessels, the deposition, which was stated on the face of the conviction, appeared to be taken on a day subsequent to the information, and made the witness state, that the defendant, *now has* concealed vessels, &c.; and the conviction was quashed, because it should have appeared that he had them at the time of the information; for, though the words might be made to imply as much, yet Lord C. J. *Holt* said, a conviction must be certain and not taken upon collection (e).

So, upon a conviction under the 11 Geo. 2, c. 19, for a fraudulent removal of goods to avoid a distress, it was held that, as the justices have no jurisdiction except where one party is *landlord* and the other *tenant*, it must appear upon the face of their order, that the party removing the goods was *tenant*; and that it cannot be supplied by intendment (f).

An order of justices, also, requiring a party to pay money or do any other act, must expressly allege every material fact on which the jurisdiction of the justices is founded. Thus, an order requiring the officer of a friendly society to pay money to a member must expressly find that such

(c) *R. v. Pain*, 7 D. & R. 678; 3 D. & R. Mag. Ca. 517; *S. P., R. v. Morley*, 1 Y. & J. 221.

(d) *Cotterill v. Lempriere*, 24 Q. B. D. 634; 59 L. J., M. C. 133; and see *White v. Redfern*, 5 Q. B. D. 15; 49 L. J., M. C. 19.

(e) *R. v. Fuller*, 1 Ld. Raym.

510; and see *R. v. Baines*, 2 Id. 1265, 1269; *Fletcher v. Calthrop*, 6 Q. B. 880, 890; *R. v. JJ. Cheshire*, 3 D. & L. 337; 15 L. J., M. C. 4, n. (1).

(f) *R. v. Davis*, 5 B. & Adol. 551; 2 Nev. & M. 349.

party is a member entitled to the money, and that the party on whom the order is made is, at the time, an officer of the society. The mere direction of the order to *D.*, "steward of the society," is not sufficient, nor the recital of a complaint on oath in the conviction, which states him to be so. Neither does the order show the applicant to be a member, and entitled to the money, by reciting that he made complaint upon oath, in which complaint he stated himself to be a member, and the money to be due; although the order may afterwards direct the money "so due and owing as aforesaid" to be paid (*g*).

In another case, to reimburse themselves the amount of expenses incurred in respect of duties cast upon them by the provisions of a statute, the parish authorities obtained a magistrate's order upon the county treasurer for payment. The order did not show on its face matters from which the jurisdiction could be inferred, and omitted to specify the nature of the expenses incurred sufficiently to indicate that they were incurred under and by virtue of the provisions of the statute, but merely contained a reference to the year of the reign in which the statute was passed. It was held that the order was bad (*h*).

But though equal certainty, and in some cases even more particularity, was required in convictions than in indictments, with regard to the statement of the facts which constitute the offence, yet the same legal nicety and formality of expression, which before the stat. 14 & 15 Vict. c. 100, was indispensable in indictments, was not necessary in summary proceedings. Lord C. J. *Holt*, though he seems to have leaned towards a strict examination of summary proceedings, says, that "in convictions by justices of peace in a summary way, where the ancient course by indictment, &c., is dispensed with, the Court may more easily dispense with *forms*; and it is sufficient for justices, in the description of the offence, to pursue the words of

Technical words unnecessary.

(*g*) *Day v. King*, 5 Adol. & E. 359.

(*h*) *R. v. Treasurer of Kent*, 22 Q. B. D. 603; 58 L. J., M. C. 71.

the statute, and they are not confined to the legal forms requisite in indictments for offences by common law: all that is necessary is, to show such a fact as is within the description of the statute, and to describe it as the statute wills" (*i*). It is evident, however, from the context, that this language refers only to those *technical* phrases, or forms of pleading, to which indictments were tied down. And this appears to be *Buller, J.*'s, view of it, when he says, "that the Court, in considering convictions, is always strict in two or three points; first, that a jurisdiction is shown by a person convicting; secondly, that the party has been summoned; thirdly, that the case is duly made out in evidence: but the Court has not been strict in the technical words of them; and I know of no case," he observes, "which says that summary convictions shall be drawn in any precise form" (*k*).

Contra pacem Therefore the fact need not be charged with the words "against the peace of the queen" (*l*). This indeed seems to be unnecessary, for the reasons suggested by the Attorney-General (Sir *E. Northey*) in the case of *The King v. Chipp* (*m*), viz., that these prosecutions are not by the king, and he can have no fine upon them for the breach of his peace.

"Unlaw-
fully."
"Know-
ingly."

Neither is the omission of the words "*unlawfully*" or "*knowingly*" any objection, unless either of these words be distinctly used in the act as part of the description of the offence (*n*).

(*i*) *R. v. Chandler*, 1 *Ld. Raym.* 581, 583; 1 *Salk.* 378; *R. v. Marsh*, 4 *D. & R.* 260; 2 *D. & R. Mag. Ca.* 182; 2 *B. & C.* 717. See *R. v. Lewis*, 8 *A. & E.* 887; and see an instance of an indictment for a conspiracy to commit certain acts which were the subject of summary conviction, and where it was held sufficient to pursue the language of the statute; *R. v. Rowlands and others*, 17 *Q. B.* 671; 21 *L. J., M. C.* 81.

(*k*) *R. v. Green*, *Cald.* 391.

(*l*) *R. v. Chandler*, 1 *Ld. Raym.* 581. This allegation may now be omitted from indictments, 14 & 15 *Vict. c.* 100, s. 24.

(*m*) 2 *Str.* 711.

(*n*) See *R. v. Chipp*, 2 *Str.* 711. But under the Pilot Act it was held necessary to aver knowledge, although the statute does not in terms make it necessary: *Chaney v. Payne*, 1 *Q. B.* 712. The insertion of these words will not assist allegations in other respects deficient. See *Fletcher v. Calthrop*, 6 *Q. B.*

It is a general rule that a conviction, being an entire judgment, must be good throughout; for if any material part be faulty it vitiates the whole (*o*). An order, on the other hand, as we have lately seen, may be quashed in part, if it be sufficiently divisible (*p*). Entirety of conviction.

887, 889, and *R. v. Mallinson*, 2 Burr. 679; see also *R. v. Speed*, 1 Ld. Raym. 588; *R. v. Marsh*, 2 B. & C. 717; and *ante*, p. 177. See where such words essential, *Carpenter v. Mason*, 12 A. & E. 629; *R. v. JJ. Radnorsh.*, 9 Dowl. 90; see also as to terms, "unlawfully," *Taylor v. Newman*, 4 B. & S. 89; 32 L. J., M. C. 188; *Aberdare Local Board v. Hammett*, L. R., 10 Q. B. 162; 44 L. J., M. C. 49; "wilfully and maliciously," *Charter v. Greame*, 13 Q. B. 226; "maliciously," *Stevenson v. Newham*, 13 C. B. 285; *R. v. Pembliton*, L. R., 2 C.

C. R. 119; 43 L. J., M. C. 91; *R. v. Ward*, L. R., 1 C. C. R. 356; 41 L. J., M. C. 69; "wilfully," *R. v. Bent*, 1 Den. C. C. 157, 159; *R. v. Badger*, 25 L. J., M. C. 85; *Id.* 90; *Hudson v. M'Rae*, 33 *Id.* 65; "wilfully and corruptly" in perjury, *R. v. Stevens*, 5 B. & C. 246; "feloniously," *R. v. Gray*, 33 L. J., M. C. 78.

(*o*) *R. v. Catherall*, 2 Str. 900; 1 T. R. 249; and *ante*, p. 171.

(*p*) See *post*, "Judgment," "Certiorari," and *R. v. Robinson*, 17 Q. B. 466; *ante*, p. 171.

CHAPTER II.

OF THE CONSTRUCTION OF CONVICTIONS.

IT may be proper in this place to offer a few remarks on the principles adopted by the Courts in the construction of penal convictions, more especially as expressions are occasionally found in the cases which have come under their adjudication tending to a notion of greater strictness being exercised in the examination of these than of any other criminal proceedings, and calculated to represent the summary jurisdiction, from which they originate, as deserving the peculiar vigilance and jealousy of the Superior Courts. It is an unquestionable principle of the common law, in the construction of penal statutes, however executed, that they shall be taken favourably for them upon whom the penalty is inflicted (*a*) ; and the judges, at different periods, may seem to have thought the application of this maxim more particularly requisite in proceedings of a summary kind. Lord C. J. *Holt* is represented on one occasion as expressing himself thus in the case of a conviction on a penal statute : "Everybody," says he, "knows that this, being a penal law, ought, by equity and reason, to be construed according to the letter, and no further. That it is penal is plain from the penalty ; and, what is highly so, the defendant is put to a summary trial different from *magna charta* ; for it is a fundamental privilege of an Englishman to be tried by a jury. Then, where a penalty is inflicted, and a different manner of trial from *magna charta* instituted, and the party offending, instead of being tried by his neighbours in a court of justice, shall be convicted by a single justice in a private chamber, upon testimony of one witness, I fain would know, if, on the consideration of

(*a*) Plow. 17, 206.

such a law, we ought not to adhere to the letter, without carrying the words farther than the natural sense" (b). Similar observations upon the nature of summary proceedings, as taking away the right of being tried *per pares*, are found in the mouth of the same judge on another occasion (c). Chief Justice *Best* has expressed like opinions :—"An act of parliament" (d), he said, "which takes away the right of trial by jury, and abridges the liberty of the subject, ought to receive the strictest construction; nothing should be holden to come under its operation that is not expressly within the letter and spirit of the act." And on a more recent occasion (e), Lord *Denman* said,— "Proceedings in cases of this nature, which are to deprive a man of his freedom in a summary way, without letting him be tried by his peers, are always construed strictly, and never supplied by intendment of matter, which does not appear on the face of them." These sentiments agree with the opinion occasionally delivered from the bench, intimating that the Court ought to hold a tight hand over these convictions (f). Mr. Serjeant *Hawkins* likewise assigns, as a reason for requiring greater certainty in them than in indictments, that the defendant has no opportunity of pleading to these summary forms (g). This reason is adopted by Lord *Kenyon* (h), and by Lord *Mansfield* (i), who says, "convictions must be taken strictly; and it is reasonable they should be so, because they must be taken to be true against the defendant, and therefore ought to be construed with strictness." It is also affirmed by *Ashhurst, J.* (k), "that the construction ought to be more strict upon convictions than upon indictments; and the reason is because the jurisdiction is summary."

(b) *R. v. Whistler*, Holt, 215.(c) *R. v. Chandler*, 1 Salk. 378 ;
R. v. Peckham, Comb. 439.(d) *Looker v. Halcomb*, 4 Bing.
188.(e) *Fletcher v. Calthrop*, 6 Q. B.
80, 891.(f) *R. v. Corden*, 4 Burr. 2281 ;
per Curiam; *R. v. Daman*, 2 B. &

Ald. 378.

(g) 2 Hawk. c. 25, s. 13.

(h) *R. v. Jukes*, 8 T. R. 544.(i) *R. v. Little*, 1 Burr. 613.(k) *R. v. Green*, Cald. 391 ; and
see *R. v. Pain*, 7 D. & R. 678 ; 3
D. & R. Mag. Cas. 517, per Abbott,
C. J.

On the other hand, however, there are not wanting examples of a less rigid construction, supported by opinions, which almost intimate a disapprobation of that strictness inculcated in those we have already noticed. Among these may be remarked what is said on another occasion by the same learned judge whose opinion has just been quoted. *Ashhurst, J.* "As to the principle drawn from the old cases, that the Court will be *astute* in discovering defects in convictions before summary jurisdictions, there seems to be no reason for it. Whether it was expedient that these jurisdictions should have been erected, was a matter for the consideration of the legislature; but, as long as they exist, we ought to go all reasonable lengths to support the determinations. Therefore, in whatever light they may have formerly been viewed, the country is now convinced that it derives considerable advantage from the exercise of the powers delegated to justices of the peace; and in modern times they have received every support from Courts of Law" (*l*). Many examples likewise occur in the following pages, of favourable intendments made in support of convictions, which afford proofs that the rigid maxims expressed on other occasions are not to be taken literally.

In order to reconcile opinions and cases, which upon first view seem to be at variance with each other, a distinction has been suggested by a very judicious writer, which appears to be warranted by closer examination of the authorities. A conviction, it must be recollected, formerly contained a memorial, both of the charge and of the judicial steps taken by the convicting magistrate. The question of the magistrate's *authority*, as collected from the record, was distinct from that of the *regularity* of his proceedings; and though nothing can be intended to aid or extend an extraordinary and circumscribed jurisdiction (*m*), yet something

(*l*) 2 T. R. 18; *ante*, p. 170, n. (i). & C. 80; *Kitchen v. Shaw*, 1 Nev. & P. 791; and see *Taylor v. Clemson*, 11 Cl. & Fin. 610.
 (*m*) See *ante*, pp. 16, 178; *Ex parte Martin*, 9 D. & R. 65; 6 B.

may reasonably be presumed for the regularity of proceedings legally commenced. Therefore, says Mr. *Boscawen*, though the Court will not admit a summary, and (if one may still use the expression), an unconstitutional jurisdiction, unless the case in which it is exercised be literally the same as described by the statute,—yet, the magistrate once appearing to be duly authorized, they will not presume against the regularity and justice of his proceedings, if he has stated them with but a reasonable degree of accuracy (*n*). Agreeably to this idea, the cases which carry the doctrine of strictness the farthest will be found to relate to points affecting the *jurisdiction*: such are—the style and title of the magistrate (*o*) ; the date (*p*) and locality (*q*) of the fact alleged ; and, more especially, the description of the offence (*r*) : in the essential parts of which no omission or defect can be supplied by implication. On the other hand, those cases which allow of a favourable intendment are mostly such as regard only the form of proceeding. Lord *Holt* himself, though he describes this summary jurisdiction as newly set up, and not known to the law before, and gives that as a reason why the statute in each case must appear to be strictly pursued, allows “ that the magistrates need not set forth every step of their proceedings, but so much that it may appear to be done, *debito modo*, in point of time,” &c. (*s*). And to the same purport is the declaration of the Court in one case (*t*), “ that where the legislature has given a power, the Court will presume the justices to have followed that power.” This consideration will serve to explain many of those instances that will be subsequently noticed, where the Courts have apparently allowed considerable latitude of presumption to support convictions (*u*).

(*n*) Bosc. 10.

(*o*) Stra. 261, *post*, p. 190.

(*p*) 1 Ld. Ray. 509, 510, *post*, p. 193.

(*q*) 13 East, 141, *post*, p. 194.

(*r*) 1 Burr. 613 ; 4 Burr. 2282 ;

1 T. R. 24 ; 1 East, 649, &c., *post*, p. 196.

(*s*) *R. v. Peckham*, Comb. 439.

(*t*) 1 Str. 46.

(*u*) 2 Ld. Ray, 1375 ; 2 Stra 1240 ; 2 T. R. 23 ; 3 Burr. 1786.

It is, however, to be remarked, as a proper caution in drawing any general conclusions from opinions or *dicta* which seem to admit of licence in the wording of convictions, that those expressions, when examined with the context, will be found to apply, not to the substance or contents of the conviction, but only to the use of certain technical forms which may be dispensed with, consistently with the utmost precision in the statement of facts (x).

The safest rule, perhaps, that can be laid down upon this subject is in the words of Lord *Ellenborough*, "that *the Court can intend nothing in favour of convictions, and will intend nothing against them*" (y). It must also be born in mind that jurisdiction must always appear on the face of proceedings before magistrates (z).

The rule of construction applicable to proceedings of inferior, as distinguished from those of superior, jurisdictions, was thus stated by Mr. Baron *Parke*, when delivering the judgment of the Court of Exchequer Chamber in *Gossett v. Howard* (a):—"In the case of special authorities given by statutes to justices or others acting out of the ordinary course of the common law, the instruments by which they act, whether warrants to arrest, commitments, or orders, or convictions, or inquisitions, ought, according to the course of decisions, to show their authority on the face of them by direct averment or reasonable intendment. Not so the process of superior Courts acting by the authority of the common law. In the argument of the

(x) *Post*, Chapter III.

(y) *R. v. Hazell*, 13 East, 141.

(z) *R. v. Fuller*, 2 D. & L. 98, 101, where *Coleridge*, J., said, "There is no rule more inflexible than the one which requires that sufficient shall appear on the face of the proceedings before magistrates to show that they have acted within their jurisdiction." See also *Hollingworth v. Palmer*, 4 Exch. 267; *R. v. Totness*, 11 Q. B. 80; *R. v. Manchester and Leeds Railway Company*, 8 A. & E. 413. No pre-

sumption from the manner of describing the fact can supply the omission of a direct averment of its being within the requisite jurisdiction. *R. v. Edwards*, 1 East, 278, and see *R. v. St. George, Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49.

(a) 10 Q. B. 411, 452. As to the construction of penal statutes in general, see *R. v. Sillen* (*The Alexandra Case*), 33 L. J. Exch. 92, 105, 117.

case of *Peacock v. Bell* (b), the rule as to pleading is well expressed, thus:—‘The rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so; nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged.’”

We shall conclude this discussion with one further observation, which is, that the Court will not presume injustice or partiality in magistrates (c); but gives them credit for the truth of the facts stated, subject to the peril attending the wilful abuse of that credit by a false statement (d).

(b) 1 Saund 74.

(c) Skin. 123.

(d) 10 Mod. 382; *Basten v.*

Carew, 5 D. & R. 558; 2 D. & R.
Mag. Ca. 563; 3 B. & C. 649.

CHAPTER III.

OF THE SEVERAL PARTS OF A CONVICTION.

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|---|-----|--|-----|
| 1. <i>Of the formal Commencement and the Statement of Offence</i> | 188 | 4. <i>Of the Penalty, Form of Award and Distribution in the Conviction</i> | 216 |
| 2. <i>Of the Form of Adjudication of Punishment</i> | 199 | 5. <i>Of Appropriating the Penalty, &c., in the Conviction</i> | 222 |
| 3. <i>Of including several Offences and Penalties in one Judgment</i> | 206 | 6. <i>Of awarding Costs</i> | 227 |
| | | 7. <i>Conclusion of the Conviction.</i> | 229 |

SECT. 1.—*Of the Formal Commencement and the Statement of Offence.*

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| 1. <i>Names of Offender and Person aggrieved</i> | 189 | 4. <i>Place of Offence</i> | 194 |
| 2. <i>Names and Style of Justices</i> | 190 | 5. <i>Description of the Offence: Degree of certainty required</i> | 197 |
| 3. <i>Time of Offence</i> | 192 | 6. <i>Pursuing Words of Statute. Negating Exemptions, &c.</i> | 198 |

General form of conviction. THE general form of conviction given in the schedule to the Summary Jurisdiction Rules, 1886, is as follows :—

CONVICTION FOR PENALTY, &C.

In the [county of . Petty Sessional Division of .]
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred and .
A. B., hereinafter called the defendant, is this day convicted for that he, on the day of , at within the aforesaid did .
And it is adjudged that the defendant for his said offence do forfeit and pay the sum of and do also pay the further sum of for compensation and for costs [by instalments of for every days, the

first instalment to be paid] forthwith [or on the day
of]:

And in default of payment it is adjudged that [the sums due under this adjudication be levied by distress and sale of the defendant's goods, and in default of sufficient distress that] the defendant be imprisoned in Her Majesty's prison at and there kept [to *hard labour*] for the space of unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

J. P.,

Justice of the Peace for the [county] aforesaid.

Seal.

A conviction or order must appear to be made within the jurisdiction of the magistrate making it (a).

If there be several offenders, each must be named. The Court refused to entertain a conviction, in which the persons charged were described as Messrs. *Harrison and Company*, and treated it as a nullity, even against the party named. For, though neither the defendant *Harrison*, nor the other, objected to the conviction on that ground, Lord *Kenyon* said, the Court were bound to take care that summary proceedings before magistrates were regularly conducted, whether the parties objected to them or not; and, in that case, the Court could not tell upon the face of the proceedings but that the delinquency of *Harrison's* partners, who were not before the Court, might have been imputed to him (b).

Names of the
offender and
person
aggrieved.

A provision is, however, sometimes made by statute, where an offender refuses to discover his name. Thus by the General Turnpike Road Act, 3 Geo. 4, c. 126, s. 132, which imposes penalties on the drivers of waggons, &c., misbehaving themselves, if the offender refuses to discover his name, he may be committed to the house of correction

(a) *R. v. Newton Ferrers*, 9 Q. B. 32; see *post*, p. 191.

(b) *R. v. Harrison and Company*, 8 T. R. 508.

for three months, or proceeded against for the penalty, by a description of his person and the offence only, without adding any name or description, but expressing in the proceedings that he refused to discover his name (c). Apart, however, from statutory provision, no man is to escape because his name is not known, and if he refuses to disclose it, he may be described as a person whose name is unknown to the magistrates, and identified by some fact; for instance, that he is personally brought before them by a certain constable (d).

In like manner the name of the person or persons aggrieved should be accurately stated if known, and if not known it should be so stated (e).

Whilst on the subject of names, it should also be mentioned that several statutes make provisions in certain cases for the description of owners of property where they are partners, companies, trustess, &c. (f).

The justices are not bound by the names contained in the information, but may draw up the conviction with what appear to be the proper ones (g).

Names and
style of
justices.

The names and style of the magistrates by whom the conviction is made must next be set forth, from which it must appear that they are magistrates of the county, borough or place where the offence is afterwards stated to have happened, in order that their jurisdiction may be shown on the face of the proceedings (h). Magistrates acting judicially must appear to be acting *in* their jurisdiction as well as for it. "It is a general rule," said Mr. Justice *Wightman* (i), "that all judicial acts exercised by persons whose judicial authority is limited as to locality,

(c) There is a similar clause in the General Highway Act, 5 & 6 Will. 4, c. 50, s. 78.

(d) *R. v. —*, R. & R. 489.

(e) 2 Hale, 181.

(f) See Archbold, Cr. Pl.; 11 & 12 Vict. c. 43, s. 4.

(g) *Whittle v. Frankland*, 2 B. & S. 49; 31 L. J., M. C. 81.

(h) *R. v. Johnson*, 1 Str. 261; *R. v. Crowan*, 14 Q. B. 221.

(i) *R. v. Totness*, 11 Q. B. 80, 90; and see *R. v. Stainforth*, *Id.* 66, 75; 15 L. J., M. C. 4, n. 1; *R. v. Milner*, 14 *Id.* 157; *R. v. St. George, Bloomsbury*, 4 El. & Bl. 520; 24 L. J., M. C. 49; *ante*, p. 18.

must appear to be done within the locality to which the authority is limited." It is not sufficient therefore, to describe them as justices *in* the county, without saying *for* the county (*k*). So where an order appeared to be made on complaint before two justices "acting in and for the county of Middlesex," and it contained no further statement of the place where it was made, except "Middlesex to wit" in the margin, it was held sufficiently to appear that the complaint and order were made in Middlesex (*m*). It is no objection, that justices are described as *being* justices, &c., without the word *there* being, &c., for that is implied (*n*). It is necessary that they should call themselves "justices" (*o*), and also justices of the *peace* (*p*).

Where the statute gives cognizance of the offence to the *next* justice of the county, the convicting magistrate should be so described; for no other but the next have any jurisdiction (*q*). But if the act only mentions justices *in or near* the place, it is but directory, and they need not be so described in the conviction (*r*): nor, if the statute speaks of justices *acting for the division*, need they be so alleged, for any justice of the county comes within that condition (*s*); but it should be alleged that the meeting

(*k*) *R. v. Dobbyn*, 2 Salk. 474. The form of conviction in the schedule to the Summary Jurisdiction Rules, 1886, describes the justices as "for" the county merely, but it shows that they were acting in the county, both by its commencement and conclusion; see the form, *ante*, p. 188; and see *R. v. Milner*, 3 D. & L. 128; 14 L. J., M. C. 157.

(*m*) *R. v. Inhabitants of St. Paul*, 7 Q. B. 533, and so in the case of recognizances, *R. v. Hodgson*, 7 Exch. 915.

(*n*) *R. v. Chipp*, 2 Str. 711. So much nicety was formerly thought necessary in the description of the justice's title and office, that a conviction was quashed because the

information was said to be before two justices of our lord the king, to keep his peace in the county of, &c., but omitting the word *assigned*. *Sander's case*, 1 Saund. 263; but see 2 Barn. 383.

(*o*) *Walton v. Chesterfield*, 5 Mod. 322; *R. v. Woodford*, 1 Bott. 434.

(*p*) See 4 Burn's Justice, tit. "Poor."

(*q*) *Sander's case*, 1 Saund. 263; Dalton, c. 6.

(*r*) 2 Keb. 559; *ante*, pp. 37, 38.

(*s*) *R. v. Price*, Cald. 305; 3 Bac. Ab. 798, tit. "Justices of Peace;" and see per Patteson, J., in *R. v. Toke*, 8 A. & E. 229, n. (*α*).

was held in and for the division, and that the offence was committed within it (*t*).

Formerly, if one of the convicting justices was required by the statute to be of the *quorum*, a conviction could not be good, unless it was so expressed in the style of the justices; but that objection is now removed by statute 26 Geo. 2, c. 27, which enacts, that no order or the adjudication of justices shall be set aside for that defect (*u*).

Time of
offence.

The conviction must likewise specify the time and place of committing the fact complained of. Formerly the time of laying the information, as well as the date of the offence and of the conviction itself, appeared upon the face of the conviction, and the reasons given for requiring such statement were, first, that the magistrate might appear to have proceeded upon a legal charge, which could not be, unless it was brought within a certain time from the commission of the offence, or, according to some statutes, till after a certain number of days had elapsed after the offence committed; and, secondly, that the party might the better defend himself upon a second charge (*v*). The date of laying the information, however, no longer appears on the face of the conviction, nor is it necessary to allege that the information was laid within the specified time (*x*).

It is also settled, that in convictions the precise day need not be named, but that it is sufficiently certain, if the fact be alleged to have happened *between* such a day and such a day, provided the last of the days specified be within the limited time. It may not be easy to assign a reason for the difference in this respect which formerly existed between convictions and indictments; in the latter of which such a mode of pleading was held to be insufficient (*y*) before 14 & 15 Vict. c. 100. The authorities,

(*t*) *R. v. Martin*, 2 Q. B. 1037,
n. (*a*); *R. v. Morice*, 2 D. & L. 952.

(*u*) And see 4 Geo. 4, c. 27;
and *R. v. Llangian*, 4 B. & S.
249; 32 L. J., M. C. 225.

(*v*) *R. v. Chandler*, 14 East, 272;

R. v. Pullen, 1 Salk. 369; *R. v. Catherall*, 2 Str. 899.

(*x*) *Wray v. Tock*, 12 Q. B. 492

(*y*) 2 Hawk. c. 24, s. 82, 8th ed
by Curwood.

however, are explicit; and the point is noticed by Mr. Serjeant *Hawkins* as solemnly decided in regard to such convictions, though the contrary is stated by him to be the law in indictments (z). The question first arose in a case which came before the Court on the former act of 3 & 4 Will. 3, c. 10, against deer-stealing. That case is reported in several books (a), none of which gives the conviction itself, but only the resolution of the Court upon the several points excepted to. The report of *Salkeld*, with which the others agree without any material variation, is as follows:—It was agreed, that “*inter* such a day and such a day defendant killed three deer,” is good; for if a day certain were alleged, the informer is not tied up to that. Now, in these cases, he is confined to giving evidence of a killing within these days; so that it is more certain and better for the defendant. Otherwise it is in informations at common law, because every distinct offence creates a new penalty; but, in trespass, a fact may be laid *diversis diebus et vicibus inter* such a day and such a day; because it is not a new action, but an increase of damages. It was further said by the Court, and supported by reference to many precedents, that all the informations in the Exchequer are in this form. And as to the argument derived from the hardship of driving the defendant to give an account of every day during the time specified,—it was answered, that the omission of the particular days is not an inconvenience, because, if he can show an authority for killing so many as are charged upon him in the same, it will drive the prosecutor to prove more; and if he be charged at another time, he may aver that those for which he has been convicted are the same (b).

Again, the very same objection was discussed afterwards, upon a conviction under the same act (c). The information, as appears by the record filed of *Hilary* Term, 12 Ann.,

(z) *Id. ib.*(b) 1 *Ld. Raym.* 582.(a) *R. v. Chandler*, 1 *Salk.* 378;
1 *Ld. Raym.* 581; *Carth.* 502; 5
Mod. 446.(c) *R. v. Simpson*, 13 *Ann.* 10
Mod. 248.

alleged that the defendant committed the fact *between the last day of July and the sixth day of August, and within twelve months before the information*. The evidence was the same. The exception, as we learn from the report (d), was, that no certain time was laid for the commission of the crime. The authority of the last cited case, *R. v. Chandler*, was referred to, and considered as a conclusive answer to the objection; and what had been there insisted on was repeated, that it was the constant course of informations in the Exchequer to set forth the time in the same manner. And where the information charged the offence to have been committed on the 5th day of October, and on divers other days and times between that day and the 16th of November, and the conviction stated the offence to have been committed on the 8th of November, it was held to be valid (e).

Notwithstanding, however, that these convictions were supported, it is more regular to fix the charge to a certain day, where it can be done.

With reference to the manner of stating it, it may be noted, that an information, set out in the conviction, appearing to be exhibited on the 29th of *May*, 1805, charging the fact *within three months*, to wit, on the 12th of *May now last past*, it was held, that these words "now last past" might, by reason of the accompanying words, "within three months," refer to the day and not to the month; so as to obviate the objection of the information being out of time, by supposing it to refer to *May*, 1804 (f).

Place of
offence.

On the ground that the magistrate's jurisdiction is limited in local extent, the *place* where the offence was committed should be stated in the conviction, as well as proved by the evidence, in order that the complaint may appear to be one over which the magistrate's cognizance extends. The reports of cases applicable to this point, as

(d) 10 Mod. 248.

(e) *Onley v. Gee*, 30 L. J., M. C.

222.

(f) *R. v. Crisp*, 7 East, 389.

well as the direction in the statutory form, establish, that the fact which forms the subject of the conviction must appear to have arisen at some place within the jurisdiction of the convicting magistrate (g).

As an illustration of this rule reference may be made to a case already cited, in which a warrant, setting forth that the defendant had been convicted before two justices in and for the county of *Kent*, for that he was found on the high seas within one hundred leagues of the coast of the county of *Kent* on board a vessel, from which part of the cargo had been then and there thrown overboard to prevent seizure, was holden bad, upon the ground that the justices could have jurisdiction only by the offence being committed in *Kent*, or by its being committed on the high seas, and the offender being found in or brought to *Kent* (h).

The mention of the county in the margin does not, as we have seen, supply the want of an allegation, either expressly or by reference, of the fact being committed in the county (i). But where a place has once been mentioned, as at B. in the county of H., it is enough afterwards to say at B. *aforsaid*, without saying in the *county aforsaid*; for it will not be presumed to lie in two counties (k). And where a conviction omitted to state in the previous part of it the precise place *where* the offence was committed, but, in awarding the distribution of the penalty, awarded it "to the overseers of D. in the said county where the offence was committed," this was held to be sufficient (l).

The Court will take notice of the known divisions of the kingdom. For which reason, where an act imposed 100*l.* penalty upon the offence, if committed within the bills of mortality, and 50*l.* if without—it was held to be sufficient, in a conviction for the smaller sum, to allege the fact at

(g) See *ante*, pp. 28, 129.

(h) *Re Peerless*, 1 Q. B. 143.

(i) *R. v. Austin*, 8 Mod. 309.

(k) *R. v. Burnaby*, 2 Ld. Raym. 901, 902.

(l) *R. v. Weale*, 5 C. & P. 135.

Reading in the county of *Berks*, without averring it to be without the bills of mortality (*m*). But it seemed to be the opinion of Mr. Justice *Buller*, that if the conviction had been for the higher penalty, it might have been necessary expressly to allege the fact to have been committed within the bills of mortality.

And although the Court will take judicial notice of the general division of the kingdom into counties, it will not take notice of the local situation of places in a county, nor of the distance of one county from another (*n*).

Strictness as to locality.

The strictness with which this averment is regarded is exemplified by the following case :—

This was a conviction on 41 Geo. 3, c. 38, against a manufacturer for combining with others to refuse work. The act gave a general form for the conviction, in which it was merely required to state the offence, without anything pointing to the date or place. The offence was in substance stated in the following manner: viz.—“That the defendant on a certain day (he being then employed by *G. S., &c.*, of *Wallington*, in the county before mentioned, in the trade of a calico printer, carried on by them at *Wallington* aforesaid), and whilst he was such workman and so employed as aforesaid, refused to work with one *S. B.*, then also employed by *G. S., &c.*, in the said manufacture carried on by them at *Wallington* aforesaid.” This conviction was quashed, because it was not expressly averred *where* the refusal was given; so that it did not appear to be within the jurisdiction of the magistrate. Lord *Ellenborough*, in delivering the judgment, observed, that the words *then and there* were not to be exploded altogether, and they had sometimes more meaning than was commonly imagined (*o*).

Of describing the offence.

We are in the next place to explain the manner of

(*m*) *R. v. Vasey*, Bosc. 130. See Taylor, Ev. vol. 1, s. 17, p. 26 (7th edition).

(*n*) *Deybel's case*, 4 B. & A. 243 ;

Thorne v. Jackson, 3 C. B. 661.

(*o*) *R. v. Hazell*, 13 East, 142 ; and see *Johnson v. Reid*, 6 M. & W. 124.

describing the *body*, or substance, of the charge itself. The general qualities required in that description have been already adverted to (*p*) ; but it will now be proper to enter into the illustration of those rules by more particular examples.

And first, with respect to *certainty* in describing the offence with which the defendant is charged (*q*). And Certainty in describing the offence. now the "Summary Jurisdiction Act, 1879," declares that the description of any offence in the words of the act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law. A conviction for a pecuniary penalty, upon an information on 3 & 4 Will. 4, c. 53, against a foreigner, for being on board a vessel liable to forfeiture under an act relating to the customs, charged the offence as being committed within a port of the United Kingdom, *and within one league of the coast* ; but it appearing, that, as to being on board such vessel within one league of the coast of the United Kingdom, the pecuniary penalty was done away with by 4 & 5 Will. 4, c. 13 ; it was held that the conviction could not be supported, as it did not distinctly show to the defendant which offence was insisted on against him (*r*). So, if a statute gives summary proceedings for various offences specified in several sections, a conviction is bad which leaves it uncertain under which section it took place (*s*). And where a conviction proceeded on a repealed statute, the Court quashed the conviction, although it might have been supported under the repealing act, if the justices had professed to proceed under it (*t*). And further, it must be borne in mind, that the conviction must not be for another and a different offence from that charged in the summons, notwithstanding 11 & 12 Vict. c. 43, s. 1 (*u*).

The conviction is bad, if it charges the offence in the

(*p*) See *ante*, p. 176, *et seq.*

(*q*) *Ante*, p. 176.

(*r*) *R. v. Pereira*, 2 Ad. & E. 375.

(*s*) *Charter v. Greame*, 13 Q. B. 216.

(*t*) *Michell v. Brown*, 1 El. & El. 267 ; 28 L. J., M. C. 53.

(*u*) *Martin v. Pridgeon*, 1 El. & El. 778 ; 28 L. J., M. C. 179 ; *R. v. Brickhall*, 33 L. J., M. C. 156.

Offence
charged in
the alter-
native.

alternative. Thus, on a conviction under the former statute of 5 Geo. 3, c. 14, for killing fish in a private river, where the information set out in the conviction stated that the defendant "did kill, take and destroy, or attempt to kill, take and destroy" the fish,—the Court quashed the conviction for insufficiency (*x*).

A bye-law of the Board of Trade for the regulation of a steam tramway provided that "no smoke or steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public," under a penalty. It was held that an information and conviction for permitting smoke to escape from an engine "contrary to the bye-laws of the Board of Trade" was bad (*y*).

Negating
exemptions.

Previously to the passing of the Summary Jurisdiction Act, 1848, it was held that exceptions in the statute creating the offence should be negated where they appeared in the clause creating the offence (*z*). This was not necessary when they occurred by way of proviso in other sections of the same statute or in subsequent statutes (*a*).

The Summary Jurisdiction Act, 1848 (s. 14), enacts, that whenever in cases of summary convictions, the information or complaint negatives any exception, proviso, or condition, it shall not be necessary for the complainant to prove the negative, but the defendant may prove the affirmative in his defence (*b*). The Summary Jurisdiction Act, 1879 (s. 39, sub-s. 2), further enacts that in proceedings before Courts of summary jurisdiction any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the

(*x*) *R. v. Sadler*, 2 Chit. 519; and see Cowp. 682, 683; *R. v. North*, 6 D. & R. 143; *R. v. Morley*, 1 Y. & J. 221; *ante*, p. 176.

(*y*) *Cotterill v. Lemprière*, 24 Q. B. D. 634; 59 L. J., M. C. 133; 62 L. T. 695.

(*z*) *R. v. Clarke*, 1 Cowp. 35; *R. v. Jukes*, 8 T. R. 542.

(*a*) *Cathcart v. Hardy*, 2 M. & S. 534; *Spiers v. Parker*, 1 T. R. 141; *R. v. Hall*, 1 T. R. 320.

(*b*) See *Tennant v. Cumberland*, 1 El. & El. 401; *Davis v. Scrace*, L. R. 4 C. P. 172; 38 L. J., M. C. 79; *Morgan v. Hedger*, L. R. 5 C. P. 485.

description of the offence in the act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint; and if so specified or negatived, no proof in relation to such matter shall be required on behalf of informant or complainant.

SECT. 2.—*Of the Adjudication of Punishment—As to the Form of.*

We are, in the next place, to consider the adjudication of punishment as it appears recorded upon the conviction. Must be warranted by the premises.

It is obvious, from what has been stated, that the adjudication, in point of law, must be such as the premises warrant; for though the conclusion of the magistrate as to the facts is absolute, it is by no means so as to the legal consequences of those facts, which it cannot in the least alter or extend (c).

The judgment consists of two parts, viz. the adjudication of conviction, and the sentence, or award of punishment; to which may be added, as a branch of the latter, if it is pecuniary, the distribution of the penalty, and in some cases also, the assessment of the costs. These will be treated separately in their order; but first it should be observed that, in some cases, satisfaction for the wrong done may be awarded without the infliction of other punishment on the offender, and sometimes the information may be dismissed without the imposition of any penalty or payment of any sum whatever. Thus by stat. 24 & 25 Vict. c. 96, s. 108 (d), on a first conviction under that act, the justice may, if he think fit, discharge the offender upon his making such satisfaction to the party Power to discharge accused without punishment.

(c) *R. v. Smith*, 1 East, P. C. 183; 2 B. & P. 127; see *R. v. Lammes*, *post*, p. 201, n. (j).

Act (Larceny), and also by the Consolidation Act (Malicious Injuries), 24 & 25 Vict. c. 97, s. 66.

(d) Criminal Law Consolidation

aggrieved for damages and costs, or either of them, as shall be ascertained by the justice; and by the stat. 26 & 27 Vict. c. 103, s. 1 (*e*), if on the hearing of the case the justices are of opinion that there are circumstances which render it inexpedient to inflict any punishment, they may dismiss the person charged, without proceeding to a conviction. It is also provided, by 24 & 25 Vict. c. 100, s. 44 (*f*), that they may dismiss an information for an assault, if they deem it so trifling as not to merit any punishment.

Justices now have a general power (*g*), where they think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—either to dismiss the information, and, if they think fit, order the person charged to pay damages not exceeding 40s., with or without costs; or, upon convicting the person charged, discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either with or without payment of damages and costs (*h*).

No formal
style neces-
sary.

There is no formal style of adjudication necessary in convictions, as in judgments at common law. It is enough, after setting out the charge, if it be said, “therefore the defendant (naming him) is convicted of the premises, or of the offence,” &c., followed by an adjudication of the forfeiture, without the formal words, “therefore it is considered,” &c. (*i*). It has also been held, that a judgment in these terms, viz. “that *J. S.* (the defendant), according to the form of the statute, is convicted,” is a sufficient adjudication that he is convicted of the offence charged (*j*).

(*e*) As to servants taking their masters' corn to feed their horses.

(*f*) Criminal Law Consolidation Act (Offences against the Person).

(*g*) 42 & 43 Vict. c. 49, s. 16.

(*h*) As to release upon probation,

see *ante*, p. 166.

(*i*) *R. v. Speed*, Carth. 502, per *Curiam*; and *S. C.*, 1 *Ld. Ray.* 583.

(*j*) *R. v. Thompson*, 2 *T. R.* 18. A case is reported relative to a conviction of one as a common dis-

The words, "that the defendant is convicted," were held to be sufficient in a conviction; though the form prescribed by the statute, and intended to be pursued, used the words "duly convicted" (*k*).

The proper words to be used now, according to the form given in the schedule to the Summary Jurisdiction Rules, 1886 (*l*), are, "A. B., hereinafter called the defendant, is this day convicted, for that he on the — day of —, at — within the — aforesaid did —."

An order under the Metropolitan Building Act, 1855, requiring the owner of a structure to take it down, has been held to be invalid upon the ground that it did not contain any adjudication that the complaint, on which the order issued, was true (*m*).

Some doubt may be entertained whether, according to the earlier authorities, it was thought indispensable that the judgment should contain in form an adjudication of *forfeiture*, as well as of conviction (*n*); but it is superfluous to examine into those authorities on either side, since it is now fully established that the judgment must contain both; and the form, also prescribed by the Summary Jurisdiction Rules, after the adjudication of the *conviction*, adds, "and it is adjudged that the defendant for his said offence do forfeit and pay the sum of —,

tiller, on the statute 3 W. & M. c. 15, for keeping a private warehouse for low wines, in which the effect of the words in the adjudication, "according to the form of the statute," is said to have been carried so far, as to supply the want of evidence of the defendant being a common distiller, which was necessary by the act; *R. v. Iammas*, Skin. 562. It appears, however, by the report itself, that no judgment was given in the case. Mr. Boscawen notices the case, with a *quære* if it be law; *Bosc.* 109, 110.

(*k*) *R. v. Jefferies*, 4 T. R. 768.

(*l*) See *ante*, p. 188.

(*m*) *Labalmondicre v. Frost*, 1 El. & El. 527; 28 L. J., M. C. 155.

(*n*) In the report of the case of *R. v. Chandler*, as represented in Salk. 378, it is said to have been resolved that *ideo consideratum est quod convictus est*, without *quod foris faciat*, is enough; but in the more full, and apparently more accurate, report of the same case, 1 Ld. Ray. 583, the objection made and overruled is said to have been, that the judgment was "*quod foris faciat*," without the formal words, "*ideo consideratum est*;" which the Court held to be well enough. The same case is reported, 5 Mod. 146, where the objection taken is stated to have been, that it was, "*foris facit*," instead of "*foris fecit*."

and in default of payment it is adjudged that," &c. A conviction for deer-stealing was quashed, because it was only *convictus est*, without "*quod foris faciat*" (o): for, though the penalty was both ascertained and distributed by the act (3 & 4 W. & M. c. 10), and that was relied on as an argument in support of the formality of the judgment (p), the Court said it was like a verdict without a judgment: that, although the act fixed the penalty, there must be a judgment to levy it; for every execution must be founded upon a previous judgment; and that all the precedents were so.

Though
penalty fixed
by statute.

It is apparent, as well from a consideration of the act alluded to as from the reasons assigned for this judgment, which has been repeatedly recognized and confirmed since (q), that the judgment of forfeiture was indispensable, even before the 11 & 12 Vict. c. 43, although all the penal consequences of the judgment were strictly defined by the statute creating the offence; for the statute of 3 & 4 W. & M. c. 10, as it is observed by *Wilmot*, J. (q), in commenting upon the case, not only made the penalty certain of 20*l.* for every offence, but appropriated the distribution of it likewise.

The same point is decided in a later case upon the authority of the foregoing. This arose upon a conviction for killing two hares, under the former statute of 1 Jac. 1, c. 27. The judgment was, "that the defendant be, and he is hereby *convicted*, &c., according to the form of the statute," but no award of any penalty. The punishment was fixed by the statute, viz. 20*s.* for each hare, and, unless that was forthwith paid, commitment for three months. Another question which might have arisen, viz. whether the statute was still in force, was waived; the Court being clearly of opinion, that the conviction could not be

(o) *R. v. Hawks*, Str. 858; 1 Barnard, 300.

(p) *S. C.*, Fitz.-Gib. 124.

(q) Per *Wilmot*, J., *R. v. Vipont*,

2 Burr. 1166; and *R. v. Harris*, 7 T. R. 238; see *R. v. Payne*, 4 D. & R. 72; 2 D. & R. Mag. Ca. 169; *post*, tit. Commitment.

supported, for want of an adjudication of the penalty. Lord *Kenyon*, recapitulating the case of *R. v. Vipont* (r), said, that, notwithstanding some old cases (s), the judgment is an essential part in every conviction, let the punishment be fixed or not; and so it was held on the statute for deer-stealing, though the penalty there was certain (t).

If an express adjudication of the penalty be necessary where it is fixed by the statute itself, it must be still more indispensable where the punishment is discretionary; for in that case the conviction is manifestly imperfect, and inefficient without it. Accordingly, it was so held in the case which arose on the following proceeding:—The defendants, *Elwell and others*, were convicted on view by three justices for a forcible detainer, and were committed “till they should pay a fine to the king.” The warrant of commitment being brought up by *habeas corpus*, the Court refused to enter into the consideration of it, till the conviction itself was in Court; which being brought up by *certiorari*, the judgment therein appeared as follows: “that the said *E. Elwell*, &c., are convicted of the said forcible entry, according to the form of the statute,” &c. It then awarded, that they be committed “*quousque finem fecerint pro offensis suis prædictis*.” The warrant of commitment therefore being till the payment of a fine, which had not been assessed, the defendants were discharged from the commitment, and the conviction was quashed (u).

So, in a conviction on the statute of 12 Geo. 1, c. 34 (x), which prohibited unlawful combinations among workmen, and inflicting imprisonment at the discretion of the justices, the conclusion was, “Thereupon the aforesaid *J. V.*, &c., are convicted before us for unlawfully, &c.

(r) See next page, note (y).

(s) Salk. 371, 383, had been cited; but see note (n), *ante*, p. 201.

(t) *R. v. Harris*, 7 T. R. 238.

(u) *R. v. Elwell*, 2 Lord Raym. 1514; 2 Str. 794.

(x) Repealed; see 38 & 39 Vict. cc. 86, 90.

(stating the offence), contrary to the acts of parliament in that case made and provided." The Court declared that the conviction was clearly bad, for want of any judgment of the forfeiture. They said, a conviction is equal to a verdict and judgment; but that this was a verdict without a judgment (*y*).

Where a commitment under the Master and Servants Act (4 Geo. 4, c. 34, s. 3) (*z*), merely adjudged the complaint to be true, and then convicted the defendant of the offence, and commanded the keeper of the house of correction to receive him, to remain and be held to hard labour for a certain time; it was held to be bad, and the defendant was discharged from custody, as it did not adjudge any imprisonment (*a*). Where in a conviction under 3 Geo. 4, c. 126, s. 41 (General Turnpike Act), it was adjudged according to the form given by the statute that the

(*y*) *R. v. Vipont*, 2 Burr. 1163, where Wilnot, J., in giving his judgment, says, that a case occurred (*R. v. Ashton*, Trin. 9 Geo. 1) on the statute 1 Geo. 1, c. 48, for destroying fruit trees, in which the judgment was only, *ideo consideratum est quod convictus est*; and, though that point was not then decided, it appears to have been the sense of the Court, that the conviction was bad on that account; *R. v. Ashton*, 2 Burr. 1166. Lord Kenyon, 7 T. R. 238, remarks, "that the case is reported in Modern Cases (8 Mod. 175), but is there totally mistaken, as nine in ten, he says, in that book are. The report alluded to, however, is very consistent with what is laid down in the cases cited; for it is said, "The Court seemed clear to quash the conviction, for there ought always to be a judgment '*quod foris faciat*,' or '*quod committatur*;' for the act gives no pecuniary penalty." That case, therefore, is an authority for requiring the same adjudication of punishment, where it is corporeal only (for such was the case under 1 Geo. 1, c. 48), as where it is

pecuniary; and is cited for that purpose by Wilnot, J., 2 Burr. 1166. It is singular, therefore, considering the usual accuracy of Mr. Boscawen, that in the statement of that case, as referred to by him, p. 118, which appears by the marginal note to be cited from 8 Mod. 175, it should be represented as having been held, that since there was no forfeiture for the offence, *ideo consideratum est quod convictus est* was sufficient; and so far from the case, as reported in 8 Mod. 175, being contrary to the quotation of it by Wilnot, J., as intimated in a note by the same learned writer, p. 122, it will appear upon examination to agree with it very exactly. The volume above alluded to (8 Mod.) was severely condemned by the Court in *R. v. Williams*, 1 Burr. 386; and *R. v. Harrison*, 3 Id. 1326.

(*z*) Repealed; see 38 & 39 Vict. cc. 86 and 90.

(*a*) *Re Hammond*, 9 Q. B. 92; and see the observations upon that case in *Re Gerwood*, 2 El. & Bl. 952.

defendant should forfeit a certain sum for his offence, it was holden sufficient, without adjudging payment of that sum (b).

Justices have now the power to postpone the time of paying a sum of money awarded by them, or to make it payable by instalments (c).

And in awarding the punishment, whether pecuniary or corporeal, the magistrate should be careful not to exceed the authority given him by the statute (d); for, as we have seen, a conviction if bad in part is wholly bad, and in this respect differs from an order (e). Where the late overseer of a parish was convicted by two justices, under stat. 17 Geo. 2, c. 38, upon complaint of the succeeding overseers, for refusing and neglecting to deliver over to them a certain book belonging to the parish, called *The Bastardy Ledger*; and the justices, after finding him guilty thereof, proceeded to adjudge "that for his offence aforesaid" (that is, in not delivering over the particular book, called *The Bastardy Book*), "he be forthwith committed to the common gaol at S., to be safely kept, until he shall have yielded up *all and every the BOOKS concerning the said office of overseer belonging to the said parish*;" the Court held the conviction void, as to the adjudication respecting the imprisonment, for excess,—the same extending beyond what was previously required of the person convicted. And they further held, that a warrant of commitment founded on this conviction, and directing the gaoler to keep him in the terms of the adjudication, was void *in toto*, for which trespass and false imprisonment would lie against the justices, although the conviction had not been quashed (f).

Where conviction bad for excess.

(b) *Barnes v. White*, 1 C. B. 192.

(c) 42 & 43 Vict. c. 49, s. 7, *post*, p. 221.

(d) See *R. v. Barton*, 13 Q. B. 389; and *Barton v. Bricknell*, *Id.* 393, where the conviction improperly adjudged the offender to be placed in the stocks in default of

payment of the costs as well as of the penalty.

(e) *Ante*, p. 181; see also *Cureton v. The Queen*, 1 B. & S. 208; 30 L. J., M. C. 149, 152.

(f) *Groome v. Forrester*, 5 M. & S. 314; and see *R. v. Payne*, 4 D. & R. 72; 2 D. & R. Mag. Ca. 169;

In a conviction against four defendants, they were each adjudged to forfeit and pay a sum of money, and if the said sums were not paid, each of the defendants making default was to be imprisoned for one month, unless the said sums and the costs of conveying to the gaol each of them making default should be sooner paid. It was held that the terms of the conviction made each defendant liable to be imprisoned until he had paid the penalty and costs, not only of himself, but the other defendants, and, therefore, that there was an excess of jurisdiction. It was also held not to be a case for amendment under 12 & 13 Vict. c. 45, s. 7 (g).

SECT. 3.—*Of including several Offences and Penalties in one Judgment.*

There seems formerly to have been no objection to including in one conviction several distinct offences and penalties of the same kind.

A conviction on the former game laws stated, as well in the information as the evidence, that the defendant on three several days separately specified, kept and used steel traps, &c., to destroy game; the judgment was, that "he is convicted, and for his several offences aforesaid hath forfeited the sum of 5*l.* for each offence, making together the sum of 15*l.*, to be distributed as the statute directs." A doubt was raised, whether the defendant could legally be convicted of more than one penalty in the same conviction; and, at all events, it was contended that the adjudication should distinguish more precisely the number of penalties of which he was convicted. But Lord *Kenyon* declared, there was no objection that the defendant had

see now 11 & 12 Vict. c. 44, s. 2; and *post*, tit. Commitment, and action against Justices.

(g) *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28, in which

Lord Campbell, C. J., said, "If the conviction had followed the directions in sect. 23 of 11 & 12 Vict. c. 43, there would not have been any objection on this ground."

been convicted of several penalties, which, he said, was the constant practice in actions, and not unfrequent in convictions; and that the word *convicted* applied to the several offences charged and proved; and, taking the whole adjudication together, it was evident enough that the words, "for his several offences aforesaid," meant the three offences charged (*h*). It is now enacted by 11 & 12 Vict. c. 43, s. 10, that every complaint shall be for one matter of complaint only and not for two or more matters of complaint; and every information shall be for one offence only and not for two or more offences; but it has been decided since this statute, that the swearing of several profane oaths on one and the same occasion is only one offence, although the offender is liable to a penalty for each oath, and, therefore, the several penalties in such case may be included in one conviction (*i*).

Several penalties may not be included in one conviction unless there be but one offence with a cumulative, but, in fact, single penalty.

When several acts are charged to have been committed, it must depend upon the construction of the statute to which they refer, whether distinct penalties are incurred and ought to be awarded for each, or whether the several acts form but one aggregate offence, and require but one penalty. Several acts.

By the Game Act (1 & 2 Will. 4, c. 32, s. 3) it is forbidden under penalties to kill or take certain game during stated intervals of the year; and by sect. 23 penalties are imposed on any person taking or killing game, or using a dog or engine for that purpose, not being authorized for want of a certificate. It has been held by the Court of Queen's Bench that a person using an engine for taking game without a certificate during the forbidden interval, was liable to penalties under the latter section, although he might also be liable to penalties under sect. 3. *Cockburn*, C. J., said, "I see no reason why a man should not be liable to two penalties for the two offences—one against

(*h*) *R. v. Swallow*, 8 T. R. 284, 286; and see *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15. (*i*) *R. v. Scott*, 4 B. & S. 368; 33 L. J., M. C. 15.

the laws for preservation of game, and one against the revenue, no matter at what season of the year" (*k*).

In a case where black smoke having issued from a chimney in such quantities as to be a nuisance, an order of abatement was made under the Nuisances Removal Act, 1855, and the Sanitary Act, 1866; subsequently black smoke having again issued from the chimney, an order was made under 23 & 24 Vict. c. 77, s. 13, prohibiting the recurrence of the nuisance. Two informations having been laid, one in respect of each order, but both founded on the same act of emission of black smoke, it was held, that the act complained of being the same in each case, there could not be two convictions in respect of it (*l*).

Or offenders.

The same question is also often to be determined, in regard to the acts of *joint offenders*, who may in some cases be liable to separate penalties, sometimes to one collective penalty (*m*).

On different days.

1. As to offences consisting of several acts: if distinct and complete acts are committed on *different* days, such as the killing game on each day, no ambiguity can arise; for under such circumstances, it is clear that the offences are distinct and subject to separate penalties, as in the case just referred to. But the ambiguity arises upon a repetition of similar acts, in pursuance of one object, on the same day.

With regard to cases of this description, no general rule can be laid down; but the law in each case must be determined by the nature of the offence, and the

(*k*) *Saunders v. Baldy*, L. R., 1 Q. B. 87; 35 L. J., M. C. 71; 13 L. T. 322; 14 W. R. 176.

(*l*) *Eldleston v. Barnes*, L. R., 1 Ex. D. 67; 45 L. J., M. C. 73. See *R. v. Waterhouse*, L. R., 7 Q. B. 545, where an order of abatement of the nuisance of sending forth black smoke was made by justices, which was not complied with, and subsequently nineteen summonses were issued for disobedience of the said order, laying the

disobedience to have occurred on nineteen distinct days, and such summonses were returnable and heard on the same day, when the justices convicted on each of the summons, it was held that each summons was issued in respect of a distinct offence.

(*m*) See *Re Hartley*, 31 L. J., M. C. 232. As to joining several offenders in one conviction, see *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28; and *ante*, p. 81.

manner in which the particular statute applicable to it is worded (n).

In the following cases it has been decided, that on the former statute 5 Anne, c. 14 (o), the killing several hares on the same day incurred only one forfeiture. On same day.
Single penalty
for several
acts.

Thus a conviction *super præmissis* for three penalties of 5*l.* each, on 5 Anne, c. 14, s. 4, for killing three hares, was held to be bad, where it appeared that all was done on the same day ; for the statute did not give 5*l.* for every hare, it being all but one offence (p).

The following case, to the same effect, more explicitly points out the distinction between acts on different days, and those on the same day. Conviction on 5 Anne, c. 14, s. 4. One exception was, that the defendant was charged with so many five pounds, as he killed hares. The Court was of opinion, that the offence, for which the statute gave the forfeiture, was the keeping dogs and engines, not killing the hares. They said, " Killing never so many

(n) If a parent was convicted under 16 & 17 Vict. c. 100, ss. 2 and 9, for neglecting to have his child vaccinated, no further proceedings could have been taken against him although his child remain unvaccinated; *Pilcher v. Stafford*, 33 L. J., M. C. 113. But now, a parent who has been fined under sect. 31 of 30 & 31 Vict. c. 84, for disobeying an order to have his child vaccinated, may be convicted from time to time as long as the child remains unvaccinated; *Allen v. Worthy*, L. R., 5 Q. B. 163; 39 L. J., M. C. 36. A parent who has been fined under this section for disobedience to an order for the vaccination of his child cannot be again fined for disobedience to the same order. *R. v. JJ. Portsmouth* [1892], 1 Q. B. 491; 61 L. J., M. C. 126. In that case, Wright, J., said, "I think there is nothing in the language of s. 31 which makes disobedience to an order for the vaccination of a child a continuing offence, and that the case, therefore, falls within the principle

of *Crepps v. Durden*, that a man is not to be proceeded against twice for what is substantially one offence. There must be a second application to the justices, that they may have an opportunity of exercising their discretion as to making a second order." See *Berry v. Henderson*, L. R., 5 Q. B. 296; 39 L. J., M. C. 77, from which it would seem that there cannot be two separate convictions under different parts of sect. 17 of Pharmacy Act, 1868 (31 & 32 Vict. c. 121), in respect of the same sale.

(o) The words of the statute were, "If any person or persons not qualified, &c. shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnels, or any other engines, to kill and destroy the game, and shall thereof be convicted upon the oath of one or two credible witnesses, by the justice, &c. the person or persons so convicted shall forfeit the sum of 5*l.*"

(p) *Marriott v. Shaw*, Com. Rep. 274; *R. v. Swallow*, 8 T. R. 286.

hares on the same day is but one offence ; but if a man keep dogs and hunt several days, and kill hares, and it be laid severally, distinguishing the days, the offence is severed, and he shall forfeit 5*l.* for each" (*q*). This is agreeable to the doctrine acted upon in the case of *R. v. Swallow*, before cited (*r*). And Lord *Mansfield*, in a case before him (*s*), mentioned it as an established point, that killing more hares than one on the same day is only one offence. When it was said, therefore, in the case of *R. v. Gage* (*t*), that a conviction for using a greyhound in killing four hares, *per quod* he forfeited 20*l.*, passed unobjected to on this ground, it may be presumed, since nothing appears in the report to contradict the supposition, that the acts were laid on different days.

In like manner, though either the fact of keeping and using a setting dog for destroying game, or of keeping and using a gun for the same purpose, was a breach of the statute, yet if a conviction stated that the defendant, on a certain day, kept and used a certain setting dog, and also a certain engine called a gun, for destroying game, the adjudication could only be for a single penalty ; for going in pursuit of game with a dog and gun on the same day was but one offence (*u*).

So, on the statute 29 Car. 2, c. 7, which enacts that no tradesmen, &c., shall do or exercise any worldly labour, business or work, of their ordinary calling, on the Lord's Day ; it has been held, that only one penalty can be incurred by a baker for the exercise of his calling on the Lord's Day, though it consisted in separately selling a number of different loaves (*x*).

The question, whether several acts committed on the

(*q*) *R. v. Matthews*, 10 Mod. 27.

(*r*) *Ante*, p. 207.

(*s*) *Crepps v. Durden*, Cowp. 640 ;
1 Smith's L. C. (9th ed.) 692.

(*t*) Str. 546.

(*u*) *R. v. Lovet*, 7 T.R. 152. All
the former acts relating to game

are repealed by the 1 Will. 4, c.
82 ; and see Deac. on Game Law,
p. 13.

(*x*) *Crepps v. Durden*, Cowp.
640 ; 1 Smith's L. C. (9th ed.)
692 ; and see *Wray v. Toke*, 12
Q. B. 499.

same day make the offender liable to distinct or cumulative penalties, was much discussed in a case arising on the statute 12 Geo. 2, c. 36, which, though it related to an action, and not to a conviction, affords a doctrine applicable to both. That act made it unlawful for "any person to bring into this kingdom, for sale, any book or books first composed, and printed, and published in this kingdom, and reprinted in any other country," and declared, "that if any person shall import, or shall sell, publish or expose to sale, any such books, knowing them to have been so reprinted, every such offender, besides forfeiting the said book or books, shall forfeit the sum of five pounds, and double the value of every book which he shall so knowingly sell," &c. In an *action* for penalties under that act, it was held that two penalties were recoverable for selling two books on the same day, provided the sales were distinct (y).

In an action for penalties under the London Coal Act (1 & 2 Will. 4, c. lxxvi., s. 57), whereby a penalty not exceeding 5*l.* is imposed on the seller of coals for every sack that shall be found deficient on its being weighed in pursuance of the act, it was held that where several sacks are sent out to a purchaser at the same time, under one contract, one penalty only is incurred in respect of a deficiency in weight, though every sack is so deficient; and, therefore, where seventeen sacks were so found deficient, there were not seventeen penalties incurred, but one penalty of seventeen times 5*l.* (z). And, as we have seen (a), swearing several profane oaths at one time renders the offender liable to pay a sum of money for each oath, but the offence and penalty are in truth single. And where the defendant kept at his private residence,

(y) *Brook q. t. v. Milligan*, 3 T. R. 509.

(z) *Collins v. Hopwood*, 15 M. & W. 459. The Court held, therefore, that it might be sued for in the superior courts, notwithstanding

ing sect. 77 of the act, which directs that all penalties imposed by the act not exceeding 5*l.* shall be recovered before justices of the peace.

(a) Page 208.

and also at two shops in different parishes, articles liable to duties under the Assessed Taxes Act, but made no return in respect of any of them, he was held to be liable only to one penalty (b).

The Summary Jurisdiction Act, 1879, declares that justices shall not, by cumulative sentences of imprisonment to take effect in succession in respect of several assaults committed on the same occasion, impose imprisonment for the whole exceeding six months (c).

Several
offenders.

2. Though several offenders may be (as it seems) included in one conviction for offences jointly committed (d), it depends upon the wording of the particular statutes applicable to each case, and the quality of the offence, whether each person be liable to a distinct penalty, or all collectively to but one. And although the information be joint, the conviction may be several, as, for instance, where the offence was using a gun to kill pheasants under the Game Act (e).

Where joint
penalty.

On the statute 5 Anne, c. 14, s. 4, the words of which are recited in a foregoing page (f), it was held that two persons cannot be convicted in separate penalties for using a greyhound (g). The same construction had before been put upon the act, in an action against nine persons for keeping a lurcher; in which it was deter-

(b) *Attorney-General v. M'Clean*, 1 H. & C. 750; 32 L. J., Exch. 101. The Lord Chief Baron on that occasion said, that the words "for each and every offence," or analogous words, are found in an act of parliament when cumulative penalties are intended to be given for each and every violation of it. See also *Apothecaries' Company v. Burt*, 5 Exch. 363; 19 L. J., Exch. 334.

(c) 42 & 43 Vict. c. 49, s. 18.

(d) See *R. v. Cridland*, 7 E. & B. 853; 27 L. J., M. C. 28, 32.

(e) See *R. v. Littlechild*, L. R., 6 Q. B. 293; 40 L. J., M. C. 137; 24 L. T. 233, where a joint in-

formation was laid against two defendants under 1 & 2 Will. 4, c. 32, s. 3, and the justices heard the charge against both together, and convicted them, and a conviction was drawn up separately against each defendant imposing a penalty of 3*l.*, it was held, that as the penalty was imposed on every person acting in contravention of the statute, each defendant was separately liable to the whole penalty, and that separate convictions were right.

(f) *Ante*, p. 209, n. (o).

(g) *R. v. Bleasdale*, 4 T. R. 809.

mined, that only one penalty could be recovered against all (*h*).

In the foregoing cases, the offence is in its nature single; and the penalty, not being by the words of the act expressly severed, as it would if it were specifically imposed upon each person convicted, can only be forfeited jointly. But, if either the penalty be imposed by the act upon each person convicted, even where the offence would in its own nature be single,—or, if the quality of the offence be such, that the guilt of one person may be distinct from that of the others,—in either of these cases the penalties are several. Where several penalties.

The first of the following cases affords an instance of separate penalties being incurred by an act, which is in itself single, but the punishment for which is made separate by the terms of the statute.

The former Deer-stealing Act, 3 W. & M. c. 10, declared, “that if any person or persons shall unlawfully course, hunt, &c., any deer, without consent of the owner, and shall be convicted thereof, *every person* so offending by unlawful hunting, &c., shall forfeit, for every such offence, 20*l*.” Upon this statute it was resolved, that every person concerned in a joint act of coursing, &c., forfeited 20*l*.; and a conviction of several persons, with an award of distinct penalties against each, was held to be right (*i*).

The ensuing case presents an instance, in which the question as to distinct penalties was decided, by reference

(*h*) *Hardyman v. Whitaker*, Bull. N. P. 189; 2 East, 573; and see *Marriott v. Shaw*, Com. Rep. 274. The case of *Partridge v. Naylor* may also be referred to, as apposite to the subject. In that case, a judgment for several penalties against three persons respectively, for impounding a distress in several hundreds, contrary to 1 & 2 Phil. & Mary, c. 12, was reversed; and the error assigned was, that

there should have been but one 5*l*., and one trebling of damages; Cro. Eliz. 480. A similar example is found in the case of *Barnard v. Gostling*, 2 East, 569, on the repealed statute 37 Geo. 3, c. 90, s. 26. See joint notice of appeal against separate convictions of three defendants, *R. v. JJ. Oxfordsh.*, 4 Q. B. 177.

(*i*) *R. v. Drake*, 2 Show. 489.

to the quality of the offence. From this case, though not strictly belonging to the class of summary convictions, an accurate principle of discrimination may be deduced, with reference to the present subject.

This was an information by the Attorney-General, against three persons, on the statute of 8 Geo. 1, c. 18, s. 25, for assaulting and resisting custom-house officers in the execution of their duty, and rescuing goods which had been seized. The statute declared, "that if any person or persons shall, &c., the *party* or *parties* shall, for every such offence, forfeit 40*l.*" A verdict having passed against the defendants for 40*l.* each, Mr. *Buller* obtained a rule to show cause why the judgment should not be arrested, on the ground that by the act of parliament the offence was entire, and only one penalty of 40*l.* given for one and the same offence. The cases that were cited in support of the rule were those we have above noticed (*k*). Lord *Mansfield*:—"There is no cause of greater ambiguity, than arguing from cases, without distinguishing accurately the grounds upon which they are determined. The true reason of the cases which have been cited in support of the motion, and the distinction between these cases and the present, is this:—where the offence is in its nature single, and cannot be severed, there the penalty shall be only single; because, though several persons may join in committing it, it still constitutes but one offence; but where the offence is in its nature several, and where every person concerned may be separately guilty of it, there each offender is separately liable to the penalty; because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. Under the statute of 9 Anne, c. 14, killing a hare is but one offence in its nature; whether one or twenty kill it, it cannot be killed more than once. If partridges are netted by night, two, three or more may draw the net, but still it con-

(*k*) *Hardyman v. Whitaker*, *Naylor, ante*, p. 213, n. (*h*).
Marriott v. Shaw, *Partridge v.*

stitutes but one offence. But this statute relates to an offence in its nature several; it is a several offence at common law; and the statute adds a further sanction against that, which each man must commit severally. One may resist, another molest, another run away with the goods; all these are distinct acts, and every one's offence entire and complete in its nature; therefore, each person is liable to a penalty for his separate offence" (l).

And whether the offence is in its nature single or joint, a joint award of one fine against several defendants is erroneous; for it ought to be severed against each defendant; otherwise, one who had paid his proportionable part might be continued in prison till all the others have paid theirs; which would be in effect to punish him for the offence of another (m). This principle is exemplified in the following case:—

The 9 Geo. 4, c. 31, s. 27, enacted that where any person should unlawfully assault or beat any other person, two justices might hear and determine the offence, "and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet," not exceeding, together with costs, 5*l*. Under this statute, two parties were jointly convicted before two justices of an assault, and a joint fine was imposed; which was held illegal, and the conviction bad in substance (n). It appears that the Court will not order justices to draw up a joint conviction, instead of several convictions of several offenders, although a joint information was laid and heard against them (o).

(l) *R. v. Clark et al.* Cowp. 610. The same principle of having regard to the quality of the offence, in determining whether the penalties are joint or several, when the statute is ambiguous, has been adopted in the construction of the Toleration Act, 1 Will. & Mar. c. 18, s. 11, which inflicted a penalty of 20*l*. on any person or persons who might disquiet or disturb any congregation permitted by the act. Upon this

it has been decided, that several persons, for a joint disturbance, were liable to separate penalties of 20*l*. each; *R. v. Hube and others*, 5 T. R. 542.

(m) 2 Hawk. c. 10, s. 16.

(n) *Morgan v. Brown*, 4 A. & E. 515; 6 Nev. & M. 57, *S. C.*

(o) *Re Clee and another*, 1 B. C. C. 31; 21 L. J. M. Ca. 112; and see *R. v. Turk*, 10 Q. B. 540.

The Public Health Act, 1890, declares that nothing in that act is to exempt any person from any penalty to which he would have been liable if that act had not passed, provided that no person is to be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence (*p*). By the next section "daily penalty" means a penalty for each day on which any offence is continued—after conviction therefor.

Two or more
offences
charged.

3. Two distinct offences cannot now be charged in the information (*q*).

If an offence is alleged, accompanied with a statement of some act not punishable by summary conviction, yet a judgment, that the defendant is convicted for the *said offence*, is good, as referring to that fact which is the proper subject of this mode of punishment. Thus, a conviction on the former act, 3 & 4 W. & M. c. 10, against deer-stealing, charged, that the defendant, with force and arms, *broke and entered* a park where deer were usually kept, without consent of the owner, and then and there *unlawfully coursed one fallow deer, &c.*; and the judgment of conviction and penalty were *for the offence aforesaid*. It was objected, that there was no statute against breaking and entering the park, and that the penalty, being for the aforesaid offence generally, could not be distinguished. But the objection was overruled, for the Court said the *offence* was hunting the deer (*r*).

SECT. 4.—*Of the Penalty, Form of Award, and Distribution in the Conviction.*

Penalty must
be certain.

In awarding the penalty, whether pecuniary or corporeal, it is essential that it be certain and determinate, and such as is warranted by the statute. We have seen that a con-

(*p*) 53 & 54 Vict. c. 59, s. 10.
(*q*) 11 & 12 Vict. c. 43, s. 10.

(*r*) *R. v. Drake*, 2 Sho. 489, 1st objection.

viction, adjudging that the defendants were convicted, and awarding an imprisonment "till they should pay a fine to the king," without ascertaining its amount, was held to be bad (*s*). So, a conviction awarding the defendant to pay 15*l.*, together with the charges previous to and attending the conviction, was quashed for uncertainty, and the commitment upon it discharged; for the imprisonment, in that case, was merely a mode of enforcing payment, and, while the sum remained uncertain, the defendant could not be released (*t*). So, where the statute enabled the convicting magistrate to levy as well the penalties as the costs and charges of the distress, &c., a conviction, adjudging that the defendant had forfeited so much for penalties, "together with the reasonable charges of recovering the same," was set aside as defective, in not ascertaining the exact sum (*u*). By 11 & 12 Vict. c. 43, s. 18, whenever costs are given to either party, the sum allowed for them is to be specified in the conviction or order of dismissal (*x*).

Where a statute authorizes the magistrate to award damages (*y*), not exceeding a certain sum, to the party aggrieved, the sum awarded should be in proportion to the amount of the injury, and the magistrate will not be justified, without any inquiry as to the real damage sustained, in awarding the full sum mentioned in the statute. Thus, where on a conviction under the former Malicious Trespass Act, 1 Geo. 4, c. 56, which directed that the offending party "should forfeit and pay to the person aggrieved such a sum of money as should appear to the justices to be a reasonable satisfaction and compensation for the damage committed, not exceeding in any case the sum of 5*l.*," and a magistrate convicted a party in the full penalty

(*s*) *R. v. Elwell*, 2 Str. 794 ; *ante*, p. 203.

(*t*) Per Lord Mansfield, *R. v. Hall*, Cowp. 60.

(*u*) *R. v. Symonds*, 1 East, 189 ; *R. v. Payne*, 4 D. & B. 72 ; 2 D. &

R. Mag. Ca. 169, *post*.

(*x*) See also ss. 21—24, 26, 27.

See *post*, "Costs," p. 227.

(*y*) For instances of which, see the Criminal Consolidation Acts, 24 & 25 Vict. cc. 96, 97.

of 5*l.* for cutting and taking away a post or pale out of the prosecutor's fence, and there was no statement that the post carried away was of that value, *Best, J.*, said "The magistrates think they have power to award the sum of 5*l.* at all events; but it is not so. They are to ascertain what the amount of damage in such case is, and award reasonable compensation or satisfaction to the party injured, according to the amount of injury proved. They cannot go beyond the 5*l.* limited by the statute; but they are not to award 5*l.*, unless damage is proved to that amount (*z*).

What
included in
the judgment

Whatever is made by the statute a constituent part of the punishment, and not left in the discretion of the magistrate, must necessarily form part of the judgment expressed in the conviction (*a*).

Not to mix
penalties by
different
statutes.

In affixing the punishment of an offence, which may be proceeded against upon one or other of two different statutes, care must be taken not to blend the penalties under both (*b*). The necessity of attending to this particular is exemplified by the following case:—

The now repealed statute 20 Geo. 2, c. 19, relating to servants in husbandry, empowered the magistrate, upon complaint by the master of any misdemeanor, miscarriage or ill-behaviour in his service, to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour, not exceeding *one*

(*z*) *R. v. Harpur*, 1 D. & R. 222. The conviction was not set aside on this ground, but for not showing an offence within the statute. See *post*.

(*a*) See *Whitehead v. The Queen*, 7 Q. B. 582, in which judgment of transportation for seven years for stealing in a dwelling-house to the value of 5*l.*, under 7 Will. 4 & 1 Vict. c. 90, was reversed on error, the statute authorizing the punishment of transportation for any term not exceeding fifteen years, "nor less than ten years;" and *R. v. Fletcher*, Russ & Ry. 58 in which

judgment of death was passed on a prisoner convicted of murder, and the judge omitted to order dissection according to statute 25 Geo. 2, c. 37, s. 2; see also *R. v. Ellis*, 5 B. & C. 395. But see now, s. 4 of Summary Jurisdiction Act, 1879.

(*b*) An instance of error of this kind is found in *R. v. Clarke*, Cowp. 35; and see *Charter v. Greame*, 13 Q. B. 216; and care must be taken not to convict under one statute, the summons being under another, see *R. v. Brickhall*, 38 L. J., M. C. 157.

calendar month. A subsequent statute, 6 Geo. 3, c. 25, for regulating apprentices and persons working under contract, enacted, that if any labourer, or other person, after contracting for any time, shall leave his service, or be guilty of any other misdemeanor, he may, upon complaint, be committed to the house of correction, for any term not exceeding *three* nor less than *one* month. The Court of Queen's Bench had occasion to consider the form of a precedent, which, blending the two acts, awarded a commitment, *correction and hard labour* (as in the statute 20 Geo. 2, c. 19), but assigned the time of imprisonment *three* months, pursuant to the statute 6 Geo. 3, c. 25,—and not to that of 20 Geo. 2, c. 19, whereby the imprisonment is only for *one* month. The Court, upon considering both the acts, were of opinion, that the punishments inflicted by each could not be mixed, and that the form alluded to was incorrect (*c*).

So, where the conviction was under the statute 4 Geo. 4, c. 34, s. 3, against a servant for absenting himself from his service, and adjudged according to that statute that he should be imprisoned and kept to hard labour for one month, but the commitment, following the words of another statute *in pari materia* (20 Geo 2, c. 19, s. 2), required the keeper to receive him into custody, there to remain and *be corrected* and held to hard labour for one month; the commitment was held to be bad, as varying from the conviction and authorizing a punishment not warranted by the statute (*d*).

If the penalty appears to be properly ascertained by the conviction, the Queen's Bench Division will not inquire when it was fixed; for, if determined at any time before the conviction is formally drawn up and returned, it will be sufficient upon that return (*e*).

Time of fixing
penalty not
controvertible.

(*c*) *R. v. Hoseason*, 14 East, 605. The particular conviction then before the Court was not exposed to this objection, because the time of imprisonment therein was for one

month, which was authorized by both statutes.

(*d*) *Wood v. Fenwick*, 10 M. & W. 195.

(*e*) 2 Ld. Raym. 1514; *R. v.*

Mitigated
penalty.

Formerly the magistrate could, in general, impose no other than the precise penalty directed by the statute ; and had not, as incident to his jurisdiction, any power to postpone its payment, to make it payable by instalments, or to lessen it (*f*). A judgment for too little was as faulty as a judgment for too much (*g*). The discretionary power of *mitigating* the penalty, therefore, only existed in cases where it was expressly vested in the magistrates by particular statutes (*h*). The power of magistrates to mitigate punishment has now been enlarged by the Summary Jurisdiction Act, 1879 (*i*), which declares that notwithstanding any enactment to the contrary, magistrates may impose imprisonment without hard labour (*k*), and reduce the prescribed period thereof, and may reduce the prescribed amount of a fine imposed in respect of a first offence (*l*), and may dispense with any requirements for the offender to enter into his recognizances and to find sureties for keeping the peace, and observing some other condition (*m*), and that where magistrates have authority

Layton, 1 Salk. 352 ; *Lambard*, 151. What is said by the Court in *R. v. Dimpsey*, 2 T. R. 97, *post*, that a judgment is an entire thing, and that part cannot be given at one time, and part at another, does not invalidate the position laid down in the cases above cited ; for that was said with reference to an omission in the judgment, as returned to the *certiorari*, in not appropriating the penalty, and was in answer to a suggestion from the bar, that the distribution might be made afterwards.

(*f*) *Ante*, p. 220.

(*g*) *R. v. Salamons*, 1 T. R. 252 ; *Whitehead v. The Queen*, 7 Q. B. 582 ; *ante*, p. 218, n. (*a*).

(*h*) By 2 & 3 Vict. c. 71, s. 35, power is given to the metropolitan police magistrates to mitigate penalties. When the penalty has been mitigated, this ought to be stated in the conviction, for otherwise it cannot appear to the Court, on appeal, how or in what degree

the magistrate has exercised the authority with which he is invested. Thus the conviction should first adjudicate the whole penalty inflicted by the statute ; and then, in a separate sentence, state to what inferior sum he has mitigated it ; see 1 Burn's Justices, tit. "Conviction," and *Re Boothroyd*, 15 M. & W. 10, *per* Pollock, C. B.

(*i*) 42 & 43 Vict. c. 49, s. 4.

(*k*) As to hard labour, see *post*, p. 277.

(*l*) See *Murray v. Thompson*, 22 Q. B. D. 142.

(*m*) But this does not apply to any proceedings taken under any act relating to any of Her Majesty's regular or auxiliary forces ; 42 & 43 Vict. c. 49, s. 52, or where the fine is inflicted under an act, which carries into effect a treaty with a foreign state, stipulating for a fine of a minimum amount, s. 54.

to impose imprisonment for an offence punishable on summary conviction, and have not authority to impose a fine for that offence, they may, notwithstanding, if they think that the justice of the case will be better met, by a fine than by imprisonment, impose a fine not exceeding a certain amount.

Fine instead of imprisonment.

The Summary Jurisdiction Act, 1879 (*n*), authorizes justices by whose conviction or order any sum is adjudged to be paid, to allow time for the payment; and to direct payment to be made by instalments; and to direct that the person liable to pay shall be at liberty to give security, with or without sureties, for the payment of the sum of money. A Court of Summary Jurisdiction, directing the payment of a sum, or of an instalment of a sum, may direct such payment to be made at such times, and in such places, and to such persons as may be specified by the Court (*o*).

Payment by instalments.

Taking security for payment of money.

A child on summary conviction for an offence punishable on summary conviction is not to be imprisoned for a longer period than one month, nor fined a larger sum than forty shillings (*p*).

Limitation of punishment of children.

A conviction, as we have seen, must be good in all its parts, and differs in this respect from an order (*q*). The judgment in particular, being an entire act, cannot be severed; and, therefore, if it be bad as to part, the whole is thereby vacated, although the several parts may be in their nature distinct. Thus, a conviction for not accounting for tolls, and also for not paying over the receipts, being defective as to the latter offence, for not specifying the sums, though correct as to the former, was quashed altogether (*r*).

Judgment cannot be severed.

(*n*) 42 & 43 Vict. c. 49, s. 7.

(*o*) 42 & 43 Vict. c. 49, s. 7. Justices by 14 & 15 Vict. c. 55, s. 12, have a general power to remit fees.

(*p*) 42 & 43 Vict. c. 49, s. 15.

(*q*) *Per Curiam*, 1 T. R. 251; so a commitment in execution, if bad

in part, is bad for the whole; see *ante*, p. 181; and *post*, "Commitment;" *Ex parte Addis*, 1 B. & C. 90; *Goff's case*, 3 M. & S. 203; *Morgan v. Brown*, 4 A. & E. 515; see also *Skingley v. Surridge and another*, 11 M. & W. 503, 516.

(*r*) *R. v. Cathrall*, 2 Str. 900.

SECT. 5.—*Of appropriating the Penalty, &c., in the Conviction.*

| | | | | |
|-----------------------------|---|--|--------------------------------------|-----|
| 1. <i>Penalty</i> | 222 | | 2. <i>Amount of Injury</i> | 225 |
| | 3. <i>Restitution of Property</i> | | | 226 |

Distribution
of penalty
how awarded.

The appropriation of the penalty is either fixed by the statute itself, or it is left to the discretion of the convicting magistrate to assign the object, or proportion, according to which it is to be disposed of. In the former case, that is, where the statute itself makes a complete and determinate disposal, the conviction need not contain any express award to that effect. Thus, on the old Deer-stealing Act, 3 & 4 W. & M. c. 10, which ordered the penalty to be divided equally between the poor of the parish and the party grieved, it was held sufficient to award a forfeiture of the penalty, without proceeding to specify the application (*s*). This is the usual mode, wherever the statute applies the penalty with such certainty, that the judgment can be unequivocally carried into effect by reference to the act alone (*t*). The form of the judgment in such cases usually awarded the penalty to be distributed as the act directs (*u*). But the general form now in use under the Summary Jurisdiction Rules, 1886, gives no direction. The words in the form for a conviction for a penalty are "And it is adjudged that the defendant for his said offence do forfeit and pay the sum of and do also pay the further sum of for compensation and for costs" (*x*). The old form under the Summary Jurisdiction Act, 1848, directed the penalty "to be paid and applied according to law" (*y*).

Special appro-
priation of
fine under
a statute.

Where in pursuance of any statute a Court of Summary

(*s*) *R. v. Barret*, 1 Salk. 383.

(*t*) 8 East, 573.

(*u*) See *R. v. Thompson*, 2 T. R. 18, where the conviction was confirmed, without any objection to it on account of its being in that form. At that time, the penalty was given by the act, half to the informer, and

half to the poor, though it was afterwards altered, and given wholly to the informer.

(*x*) Form 11, in schedule to Summary Jurisdiction Rules, 1886.

(*y*) 11 & 12 Vict. c. 43, Schedule (II.).

Jurisdiction specially directs the appropriation of a fine, the statute under which the appropriation is made is to be set forth in the register and authenticated by the signature of the justice, or one of the justices constituting the Court (z).

Where there is a material variation, in the appropriation of the penalty, from the directions of the act of parliament, the conviction will be bad (a). Where the penalty was ordered to be paid to a party who was not the party authorized by the statute to receive it, and in the event of non-payment imprisonment was awarded, the conviction was held to be invalid (b).

And where any discretion is vested in the magistrate, either as to the object or rate of appropriation, or where any sum is to be assigned by way of satisfaction or reward, the judgment must in such cases specifically appoint the manner and proportion in which the penalty is to be distributed (c). Where specific distribution is necessary.

In like manner, where the amount is ascertained by the act, but the description of persons entitled is the subject of the magistrate's selection, or even where both the amount and the description of persons are determined, but the individuals answering that description are uncertain, in each of these cases, the magistrate must exercise his discretion in these particulars at the time of the adjudication, and make the requisite selection, by name, of the party entitled; and that must appear upon the record, so as to leave no part of the judgment or execution liable to uncertainty (d). Specification of party entitled to.

(z) Rule 4 of the Summary Jurisdiction Rules, 1886. The register here referred to is the register required to be kept by the clerk of each court of summary jurisdiction in pursuance of s. 22 of the Summary Jurisdiction Act, 1879, with such particulars as appear by the form in part III. of the schedule to such rules.

(a) *Griffith v. Harries*, 2 M. & W.

335.

(b) *Chaddock v. Wilbraham and another*, 5 C. B. 645.

(c) *R. v. Dimpsey*, 2 T. R. 96; and see *Re Boothroyd*, 15 M. & W. 1, 10; *R. v. Symonds*, 1 East, 189.

(d) *R. v. Seale*, 8 East, 568, 573. Note, the statute 32 Geo. 3, c. 58, regulating the seven public offices in *Middlesex* and *Surrey*, provided

Informer's
share.

It is the policy of most of the statutes inflicting penalties, to give part of the penalty to the informer (e). The

that the penalties levied by the justices, under that act, should (except the informer's share) be paid to the receiver appointed by the act. This clause was held only to warrant the magistrates in paying the money to the receiver, but did not vary the form of the conviction made at those offices, per Buller, J., 3 T. R. 341; see now 10 Geo. 4, c. 44; 2 & 3 Vict. c. 71, for regulating the police of the metropolis. By sect. 47 of 2 & 3 Vict. c. 71, when penalties are made payable to any person, except to the informer, and are recovered before a metropolitan police magistrate, they shall be adjudged to be paid to the receiver for the metropolitan police district; see *Wray v. Ellis*, 1 El. & El. 276; 28 L. J., M. C. 45. By sect. 6 of 3 & 4 Vict. c. 84, any two justices having jurisdiction within metropolitan police district while sitting together in petty sessions, except in divisions assigned to the police courts, have all the powers, privileges, and duties which any one magistrate of the police courts has. It has been held that this did not make penalties, which were recovered before two justices sitting as above, penalties recovered before a police magistrate; and that therefore the share of such penalties unappropriated to the informer or party aggrieved did not go to the receiver of the metropolitan police district; see *Receiver for Metropolitan Police District v. Bell*, L. R., 7 Q. B. 433; and see 35 & 36 Vict. c. 94, s. 66. By 11 & 12 Vict. c. 43, s. 31, the constable, or other person to whom a warrant of distress is directed, shall be thereby ordered to pay the amount to be levied thereunder to the clerk of the division in which the justice issuing the warrant usually acts; if a person convicted in any penalty, or ordered by a justice to pay a sum of money, pays it to a constable or other person, it is then to be paid over to

such clerk; if any person committed to prison on any conviction or order for non-payment of any penalty, or sum thereby ordered to be paid, desires to pay the same and costs before the expiration of the time for which he shall be ordered to be imprisoned, he is to pay it to the gaoler or keeper of the prison, who is then to pay the same to the said clerk. All sums so received by the said clerk are forthwith to be paid by him to the party or parties to which the same are to be paid according to the directions of the statute on which the information was framed; and if the statute contains no such directions, then to the treasurer of the county, riding, &c. for which such justice shall have acted. Provisions are also made by the same section for insuring regularity in accounting for penalties.

(e) The policy of this expedient is enforced in a preamble to a clause in an old statute, 25 Hen. 8, c. 9, concerning pewterers; which, after reciting a former act, proceeds to take notice, "that forasmuch as the forfeiture therein is to the only use of the king's highness, and that any party searching or finding the articles there condemned is not entitled to have any benefit thereby, it hath not been known that any person or persons have taken any pains to search or make inquiry thereof, by reason whereof divers evil-disposed persons, &c. daily go about from village to village, selling such pewter and brass, which is not good, and using such deceivable weights and beams, as they did before the making of the said act, to the great hurt and detriment of the king's subjects;" for which reason, it is enacted by that clause, that half the forfeiture shall belong to the informer. By 26 & 27 Vict. c. 113 (prohibiting the use of poisoned grain or seed), s. 5, the justices have power to

proportion is now generally one-half. At first it was commonly one-fourth, afterwards one-third by later statutes, and lastly, one-half. Even this large proportion, says an eminent writer on the penal statutes, seldom hath its effect (*f*).

The same rules will of course apply, where, instead of, ^{Amount of injury.} or in addition to, a penalty, the defendant is to pay the amount of the injury he has occasioned. Thus, 24 & 25 Vict. c. 96, contains such a provision, and then, by s. 106, provides that every sum of money forfeited on summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice, whether in addition to such value or amount, or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person (see 11 & 12 Vict. c. 43, s. 31); provided that where several persons shall join in the commission of the same offence, and shall, on conviction, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, no further sum shall be paid to the party aggrieved than such value or amount, and the remaining sum or sums shall be applied in the same manner as any penalty imposed by a justice is hereinbefore directed to be applied. And 24 & 25 Vict. c. 97, contains analogous provisions.

sward to the informer or prosecutor (not being a police-constable or peace-officer) any portion not exceeding one moiety of the penalty recovered under that act, and he or any person giving evidence is to be freed from penalties he may

have incurred under it, if he has laid the information or given the evidence before an information has been laid against him for such penalties.

(*f*) Barrington's Observations on the Statutes, 207, n. (*a*).

The Factory and Workshop Act, 1878 (*g*), declares that if any person is killed, or suffers any bodily harm, in consequence of the occupier of a factory having neglected to fence any machinery, &c., as required by that Act, such occupier shall be liable to a fine not exceeding 100*l.*, the whole or any part of which may be applied for the benefit of the injured person or his family.

Compensa-
tion.

Justices dealing summarily with an indictable offence in pursuance of the Summary Jurisdiction Act, 1879 (*h*), may grant to the person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the Court may deem reasonable for his expenses, trouble, and loss of time therein; and the

Restitution of
property, &c.

24 & 25 Vict. c. 96 (*i*), contains provisions as to restitution. And by 30 & 31 Vict. c. 35, it is provided that where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offence which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person, and that such person had no knowledge that the same was stolen, and that any monies have been taken from the prisoner on his apprehension, it shall be lawful for the Court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such monies a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser (*k*).

(*g*) 41 Vict. c. 16, s. 82.

(*h*) 42 & 43 Vict. c. 49, s. 28.

(*i*) Larceny Act. As to restitution of property, see *R. v. The London Corporation*, 27 L. J., M. C. 231. As to returning property to a person charged with an offence, see 42 & 43 Vict. c. 49, s. 44.

(*k*) See also 33 & 34 Vict. c. 23,

ss. 4, 5, under which a person convicted of treason or felony may be condemned in costs, and the court may award compensation, to be paid by the person convicted to persons defrauded or injured by the felony. See *R. v. D'Eyncourt*, 21 Q. B. D. 109; 51 L. J., M. C. 64; *R. v. Slade*, 21 Q. B. D. 433.

SECT. 6.—*Of awarding Costs.*

Till the statute 18 Geo. 3, c. 19, was passed, there was no general power enabling the convicting magistrate to award costs to either party, though such a provision had occasionally been inserted in particular acts. Power to award costs.

But by that statute (since repealed so far as it relates to this subject (*l*)), costs might be awarded to either party, and if the penalty amounted to 5*l.*, the costs were to be deducted out of the penalty (*m*). Now, by stat. 11 & 12 Vict. c. 43, s. 18, it is enacted, that in all cases of summary convictions or of orders (except those within s. 35), the justices making the same may, in their discretion, award and order in and by such conviction or order that the defendant shall pay to the prosecutor such costs as to the justices seem just and reasonable. Also, where the information or complaint is dismissed, the prosecutor or complainant may be ordered by the order of dismissal to pay to the defendant such costs as to the justices seem just and reasonable; and the sums so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal. The costs are recoverable in the same manner, and under the same warrants, as any penalty or sum of money assessed to be paid in and by the conviction or order is recoverable; and in cases where there is no such penalty or sum, then the costs are to be recoverable by distress, and in default of distress, by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless the costs shall be sooner paid (*n*). This is subject, however, to the scale of imprisonment provided by sect. 5 of the Summary Jurisdiction Act, 1879, and moreover, in the case of *orders* to the provisions of the same act declaring that all sums to be paid by an *order* shall be deemed to

(*l*) By 11 & 12 Vict. c. 43, s. 36. 292, 510; and *Skingley v. Surridge*, 11 M. & W. 503.

(*m*) See *Wray v. Toke*, 12 Q. B. (n) Sect. 18.

be civil debts (*o*) and prohibiting their enforcement by imprisonment except on proof of means of payment by the defaulter after service of a judgment summons (*p*). Provision is also made by 11 & 12 Vict. c. 43, s. 18, for recovering the costs of the distress, and of the commitment, and of conveying the party to prison. The sums so awarded must be ascertained in the warrant (*q*).

Costs at
discretion
of third
person bad.

The justice, moreover, must himself ascertain the sum. An award "of such costs as to certain other persons (by name) shall seem reasonable" is bad, for an authority of this kind cannot be delegated (*r*).

The amount of the costs must be fixed by the justices themselves at the time they adjudicate (*s*), and may include expenses of complainant's witness, as well as fee to solicitor, if reasonably necessary, and the justice's clerks' and constables' fees (*t*). Justices have a general power to remit fees (*s*).

Costs where
fine does not
exceed five
shillings.

Where a fine adjudged by a conviction to be paid does not exceed five shillings, then, unless the justices think fit to expressly order otherwise, no order is to be made for payment by the defendant to the informant of any costs; and, unless expressly ordered otherwise, all fees payable by the informant are to be repaid to him; the justices may also order the fine, or part of it, to be paid to the informant in or towards the payment of his costs (*u*).

We have seen that, by sect. 18 of 11 & 12 Vict. c. 43, the sum allowed for costs is to be specified in the conviction (*x*), and to be recoverable in the same way as any

(*o*) 42 & 43 Vict. c. 49, s. 6.

(*p*) S. 35.

(*q*) Sects. 21—24, 26, 27. The last mentioned section refers to costs of appeal; see Appeal, and *R. v. Payne*, 4 D. & R. 72; see also 12 & 13 Vict. c. 14, for enabling overseers of the poor and surveyors of the highways to recover the costs of distraining for rates, and *Walsh v. Southworth and others*, 6 Exch. 150.

(*r*) *R. v. St. Mary's, Nottingham*, 13 East, 57, n.; *Selwood v. Mount*, 1 Q. B. 726; *Lock v. Selwood*, *Id.* 736; *R. v. Clark*, 5 *Id.* 887; *post*, "Appeal."

(*s*) *R. v. JJ. Hampshire*, 32 L. J., M. C. 46.

(*t*) 14 & 15 Vict. c. 55, s. 12.

(*u*) 42 & 43 Vict. c. 49, s. 8.

(*x*) Where the justices signed a conviction and warrant of commitment, leaving blanks for the amount

penalty adjudged to be paid by such conviction is recoverable.

Where a sum of money is recoverable on complaint to a court of summary jurisdiction, by an *order* of such Court, and not by a conviction on information, such sum is deemed a civil debt, and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint can only be enforced in like manner as such civil debt (y). Where the justices have awarded costs to a party on an appeal against a conviction, in pursuance of the power given by an act of parliament which declares that they may be levied by distress, a mandamus lies, or a rule will be granted (z), to compel the justices to issue their warrant of distress (a).

Costs of, sum
recoverable
by summary
order.

SECT. 7.—*Conclusion of the Conviction.*

The conviction concludes with an attestation under the hand and seal of the magistrate, which is the only proper mode of authenticating it as the record of his proceeding (b). In cases where the conviction is made by two

of costs to be inserted, it was held to be an irregularity, but not an excess of jurisdiction rendering them liable to an action; *Bott v. Ackroyd*, 28 L. J., M. C. 207; see also *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1.

(y) 42 & 43 Vict. c. 49, s. 35.

(z) 11 & 12 Vict. c. 44, s. 5.

(a) *R. v. JJ. Hants*, 1 B. & Adol. 654; see *Ex parte Thomas*, 16 L. J., M. C. 57; *post*, p. 245. As to costs of indictable offences dealt with summarily under Summary Jurisdiction Act, 1879, see s. 28 of that Act.

(b) *Ante*, p. 169. An order, having an impression made on it with ink by means of a wooden block, is sufficiently sealed; *R. v. St. Paul's, Covent Garden*, 7 Q. B. 232; 14 L. J., M. C. 109; and see *Re Morley*, 33 L. J., Prob. 108;

Jenkyns v. Garsford, 32 L. J. Prob. 122. Justices need not sign their christian names at full length to an order of removal; *R. v. Worthenbury*, 7 Q. B. 555; 14 L. J., M. C. 144. A verbal adjudication was made by justices in petty sessions, and a formal order was afterwards drawn up and signed by one justice on the 1st of March, and by the others on the 3rd; it was held to be valid; *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193. An order altered by one of the justices in the presence of the other after signature, but before delivery, is not vitiated; *R. v. Llanwinio*, 4 T. R. 473; see *R. v. Winwick*, 6 *Id.* 454. As to alteration of a case after it has been stated and given to the prosecutor, see *Chandler's case*, 32 L. J., M. C. 66.

justices, they must both sign the conviction (c), though one signature only is required to the distress-warrant and commitment.

Date.

Along with the attestation the date is usually affixed; and it is material, where the time for conviction is limited by statute, that the date should bring it within that time when compared with the date alleged for the offence:—

Thus, on a statute requiring the offence to be prosecuted within twelve months, a conviction, dated 13th *August*, 1708, for an offence committed 14th *August*, 1707, was deemed objectionable, though it contained an averment of the defendant “being duly prosecuted within twelve months after the offence:” for the justices, it was said, might construe twelve months to mean twelve calendar months, or a year, whereas by law it is twelve lunar months only (d). Now, however, the word “month” in all acts of parliament means a calendar month unless the contrary intention appears (e).

(c) 11 & 12 Vict. c. 43, s. 14.

(d) Per Holt, C. J., *R. v. Peckham*, Comb. 439; see *R. v. Bellamy*, 2 D. & B. 727; 1 D. & R. Mag.

Ca. 376; 1 B. & C. 500; and *ante*, p. 61.

(e) 51 & 52 Vict. c. 63, s. 3.

PART III.

PROCEEDINGS SUBSEQUENT TO THE CONVICTION.



CHAPTER I.

- | | |
|---|---|
| 1. <i>Of giving a Copy of the conviction</i> 231 2. <i>Of drawing up and amending Conviction and Orders.</i> 237 | 3. <i>Of returning the Conviction to the Sessions and filing the same</i> 237 |
|---|---|



THE defendant is entitled, upon application, to a copy of his conviction from the convicting magistrate. Where a party was placed under the necessity of suing out a *certiorari*, merely for the purpose of obtaining a copy of a conviction, which was necessary for his defence to an action brought for the same fact, and which had been denied by the magistrate,—the latter was refused his costs, which he would otherwise have been entitled to, on the affirmance of the conviction. Upon that occasion it was said by *Yates, J.*, “The justice ought to have given the defendant a copy of the conviction; for it was a record, and the defendant was entitled to it” (a).

Defendant's
right to copy
of conviction.

If, however, by mistake, and without any fraud or intention to mislead, a copy be delivered to the party, misstating the name of the informer, or any other fact, and a more correct one be returned to the sessions, that Court can only take notice of the latter (b). And the defendant is not, it seems, entitled to have a copy of the

(a) *R. v. Midlam*, 3 Burr. 1720.
So if a defendant be arrested on a warrant of commitment, he is entitled to a copy of it, under the

Habeas Corpus Act, 31 Car. 2, c. 2, s. 5.

(b) *R. v. Allen*, 15 East, 333, 346, *post*.

conviction to enable him to appeal against it at the sessions for any matter of mere form, or to "pick holes in it," without regard to the merits (c).

Practice as to
drawing up
conviction.

By the Summary Jurisdiction Act, 1848, it is enacted, that if the defendant be convicted, or an order be made against him, a minute or memorandum shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the justice or justices in proper form, under their hands and seals, and they shall cause the same to be lodged with the clerk of the peace to be by him filed among the records of the General Quarter Sessions. If the information or complaint be dismissed, the justices may, if they think fit, upon being required to do so, make an order of dismissal of the same, and give the defendant a certificate thereof, which certificate, afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters against the same party. Before an *order* of justices can be enforced by commitment or distress, a copy of the minute of it must be served on the defendant (d).

Register of
convictions
and orders.

The Summary Jurisdiction Act, 1879, makes it compulsory on the clerk of every court of summary jurisdiction to keep a register of the minutes of all the convictions or orders of such Court; and the entries relating to each minute are to be either entered or signed by one of the justices constituting the Court before whom the conviction or order referred to in the minute was made (e).

In point of fact, before the Act of 1848, the constant practice was, for the justices at the time of their judgment,

(c) *R. v. JJ. Huntingdon*, 5 D. & R. 588; 2 D. & R. Mag. Ca. 594, *sed quære*.

(d) 11 & 12 Vict. c. 43, ss. 14, 17. A formal order need not be drawn up before the warrant issues; *Ratt v. Parkinson and others*, 20 L. J., M. C. 208, 210. An order is said to be made when it is

pronounced verbally and before it is formally drawn up; *Ex parte Johnson*, 3 B. & S. 947; 32 L. J., M. C. 193, 196; see also *Bott v. Ackroyd*, 28 L. J., M. C. 207. And see 24 & 25 Vict. c. 100, s. 44, as to certificate of dismissal on charge of assault.

(e) 42 & 43 Vict. c. 49, s. 22.

merely to take minutes of the charge, examination, and other proceedings, without attention to precise form, to serve as *memoranda* for drawing up a more formal statement, if they should be required to file the conviction at the sessions, or to return it to a writ of *certiorari*. Nor was there, provided the statement was warranted by the facts, any legal objection to this method, which the Court of Queen's Bench had been in the habit of recognizing (*f*). Indeed it is allowed, that the formal conviction may be drawn up at any time before it is acted upon (*g*), or before the return of the *certiorari*, although after a commitment (*h*), or after the penalty has been levied by distress (*i*), or after action brought against the magistrate (*k*), or, as it seems, even after the conviction has been returned to the sessions (*l*). When justices have convicted for an offence unknown to the law, and have returned the conviction to the clerk of the peace, the Court will allow a rule for a *certiorari* to go, notwithstanding that the justices in showing cause against such rule return a corrected record of the conviction, showing such conviction to have been properly made (*m*). And, as we have seen,

(*f*) Per *Ld. Kenyon*, 1 *East*, 188, 189; 10 *Mod.* 382; *R. v. JJ. Huntingdon*, 5 *D. & R.* 588; 2 *D. & R. Mag. Ca.* 594; *Chaney v. Payne*, 1 *Q. B.* 712. In that case (as in *Charter v. Greame*, 13 *Q. B.* 216) the conviction could not be quashed, nor brought before the Court directly by the defendant, as the *certiorari* was taken away, but the commitment, which recited the conviction, having been held bad at sessions, by reason of a defect in the conviction as recited, it was held too late for the magistrates to draw up a second amended conviction, and that the effect was the same as if the conviction itself had been quashed; see *post*, "*Certiorari*." A warrant of commitment must be drawn up in writing as soon as possible after the commitment is ordered, *Hutchinson v. Lowndes*, 4 *B. & Ad.* 118; see *Re*

Elmy and another, 1 *A. & E.* 843; see as to substituting a good for a bad warrant of commitment in execution, *R. v. Richards*, 5 *Q. B.* 926; *Re Fell*, 15 *L. J.*, *M. C.* 25; *R. v. Chaney*, 6 *Dowl.* 281, 289; *Lindsay v. Leigh*, 11 *Q. B.* 455; *Ex parte Cross*, 2 *H. & N.* 354; 26 *L. J.*, *M. C.* 201; *Ex parte Smith*, 3 *H. & N.* 27; 227 *L. J.*, *M. C.* 186; *R. v. Ternan*, 33 *L. J.*, *M. C.* 201.

(*g*) Per *Erle, J.*, in *Bott v. Ackroyd*, 28 *L. J.*, *M. C.* 208.

(*h*) *Massey v. Johnson*, 12 *East*, 82, *post*, "*Commitment*."

(*i*) *R. v. Barker*, 1 *East*, 186.

(*k*) *Lindsay v. Leigh*, 11 *Q. B.* 455; *Massey v. Johnson*, 12 *East*, 82; *Gray v. Cookson*, 16 *East*, 13.

(*l*) *R. v. Richards*, 5 *Q. B.* 926; *Selwood v. Mount*, 9 *C. & P.* 75; *Chaney v. Payne*, 1 *Q. B.* 723.

(*m*) *Ex parte Austin*, 50 *L. J.*, *M. C.* 8.

Copy
delivered
not binding.

even after the magistrate has delivered to the defendant a copy of the conviction, as that upon which the subsequent proceedings have been founded, he is not thereby precluded from drawing up and returning a conviction in a formal shape, which is to be taken as the only authentic record of the proceedings (*n*) ; for the conviction returned to the sessions, or to the Queen's Bench Division, is the only one of which those Courts respectively can take notice.

Thus, after a distress and warrant of commitment issued, the party having applied for a copy of the proceedings, a copy of the original minutes was furnished to him by the justice's clerk, and the justice afterwards drew up and returned to a *certiorari* another and more formal conviction, dated as of the day when the original proceedings were had,—the latter conviction was warranted by the facts, but was more regular, and in that respect differed from the copy furnished to the defendant, which was in some respects informal,—a criminal information was moved for against the justice, on the ground that, though magistrates ought to be indulged with a reasonable time for drawing up their convictions, yet, when issued by their authority to the parties, and acted upon by levying execution, they ought not to be altered; and it was urged, that the parties, by such alteration being permitted, were liable to be drawn into unnecessary expense, as in that very instance the defendant, having received from the magistrate a copy of a conviction which was clearly bad, had been induced to apply for a *certiorari* to relieve himself from it. The Court, however, not only refused to grant an information, but said, that if the magistrate had done no more than return the conviction in a more formal shape, instead of sending it up in the informal one in which it was first drawn, and supposing the facts warranted the return actually made, it was not only legal,

(*n*) See *Basten v. Carew*, 5 D. & R. 558; 2 Mag. Cas. 563; 3 B. & C. 649; *R. v. JJ. Huntingdon*, *supra*; *R. v. Allen*, 15 East, 333 346.

but laudable in him to do as he had done ; and he would have done wrong if he had acted otherwise (*o*). And, in answer to the argument of the defendant being drawn into the expense of litigating the conviction, the Court observed, that a mere informality in the manner of drawing up the conviction ought not to be the inducement for removing it into the Queen's Bench, but some substantial defect in the justice and legality of the proceeding before the magistrate (*p*).

Thus also in one case, where the copy delivered to the defendant contained a mistake in the name of the informer (*q*), and in another, where the warrant of commitment misstated the name of the person on whose oath the conviction was founded, it was held, that these errors might and ought to have been corrected in the conviction formally returned, and the Court would not allow the defendant to avail himself of the variance as any ground of objection (*r*).

In all these cases, however, it is understood, that the corrected statement must be conformable to the facts as they really took place. And as the Court gives credit to the magistrates for the truth of the facts recorded in the conviction, it will hold them punishable for making a false statement (*s*). The fresh conviction must also be drawn up before the former one has been quashed for informality (*t*), or the defendant has been discharged for such cause, even although the conviction may not have been removed or quashed (*u*).

(*o*) *R. v. Barker*, 1 East, 188.

(*p*) In *R. v. Glossop*, Easter, 2 Geo. 4 (1821), where a *certiorari* was directed to justices to certify proceedings at sessions under their hands and seals, and the return omitted their seals, the Court gave leave to amend the return in that respect, and sent it back for that purpose ; Mr. Dowling's MS.

(*q*) *R. v. Allen*, 15 East, 333.

(*r*) 12 East, 67 ; *post*, "Appeal."

(*s*) 15 East, 346 ; and by Lord

C. J. Parker, *R. v. Simpson*, 10 Mod. 382,—“As we ought to credit the justices in the execution of that power the law has entrusted them with, if the justices should make a false return, whereby the party as well as justice is abused, they may be punished.”

(*t*) *Chaney v. Payne*, 1 Q. B. 712 ; *R. v. Chaney*, 6 Dowl. 281 ; and see *Charter v. Greame*, 13 Q. B. 216.

(*u*) *Charter v. Greame*, *supra* ; 11 & 12 Vict. c. 43, s. 14.

But where the validity of the warrant of commitment reciting the conviction was questioned, and the prisoner was remanded, the justices were allowed to substitute a good conviction (*x*); so a conviction may be drawn up to sustain a commitment valid in form, although the Court will not assume that there is a good conviction free from the objection in the commitment, nor will they direct the gaoler to substitute a formal for an informal warrant in his return to a writ of *habeas corpus* (*y*).

Until the conviction is formally drawn up the justices have a *locus pœnitentiæ*, and may change their opinion of the case; thus where, after a verbal conviction by two justices, and before any formal conviction had been drawn up, one of such justices changed his mind, and together with a third justice who had not heard the case, but without the concurrence of the other justice who had convicted, reversed such conviction, it was held that such reversal was irregular, but that as no conviction had been drawn up there was no good conviction existing, and the whole proceeding was a miscarriage (*z*).

It should be observed that an *order* of justices could not, formerly, like a conviction, be returned to sessions in an amended form, but a power of amendment in such case seems to be given by 11 & 12 Vict. c. 43, s. 14 (*a*). If two orders be made by mistake at the sitting of magistrates, it is competent for them at the time to declare which is the right one (*b*).

(*x*) *Charter v. Greame*, 13 Q. B. 216. The former one had not been returned to sessions, but that fact would not, it seems, affect the decision.

(*y*) See further on this point, *Selwood v. Mount*, 1 Q. B. 726, 734; *Lock v. Selwood*, *Id.* 736; 9 C. & P. 75; *Re Fell*, 3 D. & L. 373; *Wilkins v. Hemsworth*, 7 A. & E. 807; *The Canadian Prisoners' case*, 9 *Id.* 731; see also *post*, "Commitment," and "Habeas Corpus." Where separate convictions had been drawn up

against each of two persons upon a joint information, Erle, J., refused to order the justices to draw up one joint conviction; *Re Clee and Osborns*, 1 B. C. C. 31; 21 L. J., M. C. 112.

(*z*) *Jones v. Williams*, 46 L. J., M. C. 270; 36 L. T. 559.

(*a*) *R. v. JJ. Chesh.*, 5 B. & Ad. 439; see *Wilkins v. Wright*, 2 Cr. & Mees. 191; *R. v. JJ. Radnorsh.*, 9 Dowl. 90; *ante*, p. 170.

(*b*) *Wilkins v. Hemsworth*, 7 A. & E. 807.

By 12 & 13 Vict. c. 45, s. 7, after reciting that "in many cases, where justices of the peace are by law empowered to make orders or to give judgments (c), great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, or on removal by *certiorari* into the Court of Queen's Bench, been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matter in question," it is enacted "that, if upon the trial of any appeal to any Court of general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of *certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed; provided always, that no objection on account of any such order or judgment brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such *certiorari*" (d). This Act only applies to a mistake in drawing up the order and not to a mistake in point of substance (e).

The justice ought regularly, in every instance, but more particularly where any part of the penalty is given to the

Amendment
of convictions
and orders.

Conviction to
be filed at
sessions.

(c) The word "judgments," it seems, will include convictions; see *post*, "Appeal."

(d) See *post*, "Appeal and Cer-

tiorari."

(e) *R. v. Padbury*, 5 Q. B. D. 126.

Queen, to return a record of his conviction to the sessions, whether the party appeals or not, or whether any appeal be given by the statute or not (*f*). This is required by 11 & 12 Vict. c. 43, s. 14. On one occasion, the Court of Queen's Bench, while refusing a rule to the magistrate's clerk to return summary convictions (on the ground that he was a mere servant in the matter), expressed an opinion that the justices would be liable to have a rule granted against them, or even to an indictment, if they refused to return to the sessions a conviction made by them (*g*).

If the magistrate, after receiving due notice of appeal, neglects to return the conviction, whereby the party is prevented from prosecuting his appeal, he is liable, in an action on the case, for the special damage (*h*).

It will be observed that the 14th section of 11 & 12 Vict. c. 43, does not fix any time for the conviction to be returned and filed, and where a statute required it to be done at the "next Quarter Sessions," the words were held to be directory, not imperative, as to the time (*i*).

Publication of convictions.

Some statutes provide that where a person is convicted of an offence, the Court may if it thinks fit, cause the conviction to be published in such manner as it thinks desirable (*k*).

(*f*) *R. v. Eaton*, 2 T. R. 285.

(*g*) *Ex parte Hayward*, 3 B. & S. 546; 32 L. J., M. C. 89.

(*h*) *Proser v. Hyde*, 1 T. R. 414.

(*i*) *Charter v. Greame*, 13 Q. B. 216; *Mason v. Barker*, 1 C. & Kir. 100, 107; and see *ante*, p. 40, n. (*d*). The provision, however, in 26 Geo. 2, c. 14, which requires that a table of fees shall be prepared at one sessions and approved at "the next succeeding quarter sessions," is imperative; *Bowman v. Blyth*, 7

E. & B. 26; 27 L. J., M. C. 21.

(*k*) See Weights and Measures Act, 1889, s. 14; Sale of Bread Act, 1836 (6 & 7 Will. 4, c. 36), and Adulteration of Seeds Act, 1869, s. 8. Under the Public Health (London) Act, 1891, the Court may, under certain circumstances, order a notice of the conviction to be affixed to the premises of a person convicted of selling or exposing for sale unsound food.

CHAPTER II.

OF THE PROCEEDINGS IN EXECUTION.

| | |
|--|---|
| 1. <i>Of the Recognizance</i> . . . 239 | 3. <i>Disposal of and accounting for Fines</i> . . . 257 |
| 2. <i>Of levying the Penalty by Distress</i> . . . 243 | 4. <i>Commitment for Punishment, or in Default of Distress or Payment</i> . . . 263 |

SECT. 1.—*Of the Recognizance.*

THE proceedings ulterior to the conviction are either, on the side of the prosecution, in furtherance of the conviction, or, on behalf of the party convicted, for reversal or relief. The business of the present chapter will be to describe the several modes of enforcing the object of conviction, viz., by recognizance, distress and commitment, the last of which is either a primary punishment or only secondary to a pecuniary one.

The powers of the convicting magistrate are confined, in general, to enforcing the punishment (a) for the particular offence against which judgment has passed, the usual jurisdiction of the magistrate not enabling him to compel the offender to give security against a future breach of the law. Recognizance
against future
offence.

Where a magistrate has power to require a party brought before him to enter into a recognizance to keep the peace, the Queen's Bench Division will not interfere with his discretion in that respect (b).

Where a statute (the Night Poaching Act, 9 Geo. 4, c. 69, s. 1) empowered a magistrate to require sureties

(a) But (as we have seen, *ante*, p. 203,) there are exceptions to this rule under 24 & 25 Vict. c. 96, s. 108, and 24 & 25 Vict. c. 97, s. 66.

(b) *R. v. Tregarthen*, 5 B. & Adol. 678; 2 Nev. & M. 379; see *R. v. Dunn*, 12 A. & E. 559.

from the offender "for his not so offending again," and the warrant adjudged him to find sureties that he would "not offend again" generally, it was held to be bad (c). And where a Court of Quarter Sessions made an order that the defendants should enter into recognizances before a magistrate to keep the peace, but did not direct that in default of finding sureties they should be committed, and on the defendants declining to enter into recognizances the magistrate committed them, it was held that he had no jurisdiction to do so (d).

Sureties to
keep the
peace.

Formerly when articles of the peace were exhibited against any person, the person against whom they were exhibited could not give evidence before the justices in contradiction of the facts stated in such articles (e); but the Summary Jurisdiction Act, 1879, now provides that the complainant and defendant and witnesses may be called and examined, and cross-examined as in the case of any other complaint (f). If it appears on oath to the satisfaction of the justices that the complainant has been threatened, it is their duty to require recognizances to be entered into to keep the peace (g).

Where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof (h).

(c) *Re Reynolds and another*, 1 D. & L. 846; 13 L. J., M. C. 65. Another objection taken to the warrant was, that it required two defendants to find sureties, not only each for his own conduct, but also for the conduct of the other; but there was no decision on this point; see *Cureton v. The Queen*, B. & S. 208; 30 L. J., M. C. 149, 152. See, as to sureties to keep the peace, *Ex parte Aston*, 12 M. & W. 456; *Prickett v. Gratrex*, 8 Q. B. 1020; *R. v. JJ. Huntingdonsh.*, 14 L. J., M. C. 99; *R. v. Deny and others*,

20 L. J., M. C. 189. In the last-cited case, it was held that, on an application for sureties to keep the peace, magistrates have no jurisdiction to deal summarily with the case as for a common assault. As to estreat of recognizances, *post*, p. 260.

(d) *Re Ashton*, 7 Q. B. 169.

(e) *Lort v. Hutton*, 45 L. J., M. C. 95.

(f) 42 & 43 Vict. c. 49, s. 25.

(g) *Lort v. Hutton*, 45 L. J., M. C. 95.

(h) 42 & 43 Vict. c. 49, s. 4.

The procedure for enforcing of recognizances is now ^{Enforcing recognizances.} provided by s. 9 of the Summary Jurisdiction Act, 1879, and is as follows:—"Where a recognizance is conditioned for the appearance of a person before a Court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before a Court of summary jurisdiction, or in a proceeding in a Court of summary jurisdiction, such Court, if the said recognizance appears to the Court to be forfeited, may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance in the same manner as if the sum were a fine adjudged by such Court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction (i).

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said Court of summary jurisdiction, or any other Court of summary jurisdiction for the same county, borough, or place, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the Court for the future performance of the condition of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the Court may think just.

(2.) Where a recognizance conditioned to keep the ^{Forfeiture of recognizance to keep the peace.} peace or to be of good behaviour, or not to do or commit some act or thing, has been entered into by any person as principal or surety before a Court of summary jurisdiction, that Court or any other Court of summary jurisdiction acting for the same county, borough, or place, upon proof of the conviction of the person bound as principal by such recognizance of any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of

(i) See Form 88 in schedule to *post*, Appendix.
Summary Jurisdiction Rules, 1886,

such persons, to pay the sums for which they are respectively bound (*k*).

When recognizance to be sent to Quarter Sessions.

(3.) Except where a person seeking to put in force a recognizance to keep the peace or to be of good behaviour, by notice in writing, requires such recognizance to be transmitted to a Court of general or quarter sessions, the recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to general or quarter sessions.

Application of moneys from forfeited recognizances.

(4.) All sums paid in respect of a recognizance declared or adjudged by a Court of summary jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such Court, and shall be paid and applied by him in the manner in which fines imposed by such Court, in respect of which fines no special appropriation is made, are payable and applicable.

Recognizances taken out of Court.

When justices have fixed the amount in which the principal and the sureties (if any) are to be bound, the recognizances need not be entered into by the parties before such justices, but may be entered into before other justices, or before any clerk of justices, or before a superintendent or inspector of police, or officer in charge of any police station, or where any of the parties is in prison, before the governor of such prison (*l*).

(*k*) See form of conviction No. 13, and summons No. 3.

(*l*) 42 & 43 Vict. c. 49, s. 42. Where a court of summary jurisdiction has fixed as respects any recognisance the amount in which a principal and a surety or sureties are to be bound, the governor of a prison shall not be required to take the recognisance of any person pro-

posed as a surety, unless the person so proposed produces a certificate in writing from a court of summary jurisdiction or a clerk thereof, that he has satisfied the court or clerk of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited. Rule 13 of the Summary Jurisdiction Rules, 1886.

SECT. 2.—Of levying the Penalty by Distress.

| | | | |
|---|-----|---|-----|
| 1. Power derived from Statute | 243 | 12. How executed | 249 |
| 2. Demand, &c. before issuing Warrant | 244 | Showing Warrant | 250 |
| 3. Compelling Justices to issue Warrant | 245 | Breaking open outer Doors | 250 |
| 4. Suspended by Appeal | 245 | 13. Offender a Feme Covert | 250 |
| 5. Oath, &c. for Levy | 246 | 14. Default of Distress within Jurisdiction | 250 |
| 6. Form of Warrant | 246 | 15. Detaining Defendant | 251 |
| 7. Jurisdiction must appear | 247 | 16. Commitment of Defendant | 251 |
| 8. By whom issued | 247 | 17. Payment, &c. of Penalty | 253 |
| 9. To whom directed | 247 | 18. Levying for Costs | 253 |
| 10. By whom executed | 247 | 19. Distress replevisab'le | 254 |
| 11. Protection of Officer | 249 | 20. Sale of Distress | 255 |
| | | 21. Return of Warrant | 257 |
| | | 22. Constable refusing to Return | 257 |

The mode of enforcing the payment of pecuniary fines is usually by distress or imprisonment. The power of proceeding by these compulsory methods is derived entirely from special statutory provisions, and is not any necessary consequence of a conviction. If a statute conferred only a power to convict, without making provision for the recovery of the penalty, there seems to have been no compulsory means of carrying such a law into effect. But now by 11 & 12 Vict. c. 43, ss. 19 and 21, where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and, by the statute authorizing such conviction or order, the penalty, compensation or sum of money is to be levied by distress, and also in cases where by the statute in that behalf no mode of raising or levying the penalty, &c., or of enforcing the payment of the same is stated or provided, the penalty may be enforced by distress, or in default of distress by imprisonment.

A question was raised in *The Queen v. Paget* (m), whether this section vests in the justices a discretion as to issuing the warrant or postponing it, upon terms or conditions as to time or otherwise, but no judgment was pronounced on the question. In another case (n), *Bowen*,

(m) 8 Q. B. D. 151 ; 51 L. J., M. C. 9. (n) *In re Clew*, 8 Q. B. D. 511 ; 51 L. J., M. C. 140.

J., said, "As to whether a defendant ought to be heard before committal under sub-section 3 of s. 21, I express no opinion, as I think it desirable to reserve for further consideration the question whether a man can be rightly sent to prison until after he has been heard on the question whether he has sufficient goods to satisfy a distress."

Where any statute authorizing the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections 19 & 21 of the Summary Jurisdiction Act, 1848, as amended by section 21 of the Summary Jurisdiction Act, 1879, are to apply to the recovery of such penalty or fine (o).

It was usual, however, for the statutes inflicting penalties to contain an express authority for the purpose of enforcing them. It was sometimes directed to be exercised *immediately* upon non-payment of the penalty, in other cases only upon failure of payment after a certain number of days.

Postponement
of the issuing
of a warrant.

Justices may postpone the issuing of a warrant of distress until such time and on such conditions as they may consider just (p).

Demand and
other proceed-
ings before
issuing war-
rant.

When the justice is empowered to issue his warrant, on refusal or neglect of payment for a certain number of days, it seems to be understood that no *demand* is necessary to enable him to do so after the expiration of that time (q). So, if the defendant is rendered liable to a distress, if the penalty is not *forthwith* paid on conviction, no demand is necessary before the issuing of the warrant (r). By 11 & 12 Vict. c. 43, s. 17, in all cases where by any act of par-

(o) 47 & 48 Vict. c. 43, s. 5.

(p) 42 & 43 Vict. c. 49, s. 21.

(q) *Woolton v. Harvey*, 6 East, 75.
See *R. v. Ford*, 2 A. & E. 588;
Gibbs v. Stead, 8 B. & C. 528;
Style, 13; 11 & 12 Vict. c. 43, s.

23.

(r) *Barnes v. White*, 1 C. B. 192,
205, 210; *Arnold v. Dimsdale*, 2 El.
& Bl. 580; *Ely v. Moule*, 5 Exch.
918; see *ante*, p. 21, n. (m); and
post, "Commitment." In cases

liament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress for not obeying any *order* of justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress. The distress warrant may issue at any time after adjudication and before the formal order has been drawn up, provided a minute of the order has been served (s).

And we have already seen (t), that where a statute has awarded costs to a party on a conviction before a magistrate, and declared that they may be levied by distress, the justice is compellable by mandamus or by rule to issue his warrant of distress if default be made in payment of the costs. But where the justices had reasonable ground for doubting their jurisdiction in this respect, the Court would not compel them to do an act which might subject them to an action (u). Now, however, they are not responsible for obeying the rule (x) or mandamus.

Those statutes, which give a power of appeal to the party convicted, frequently also provide, that, upon the appeal, and security given for prosecuting it, the distress

Compelling
justices to
issue warrant.

Suspended by
appeal.

where the distress is for a mere rate or assessment, there should in general be a summons and hearing before a warrant is issued; see *R. v. Benn*, 6 T. R. 198; *R. v. JJ. Stafford*, 3 A. & E. 425; and *Painter v. The Liverpool Gas Company*, *Id.* 433.

(s) *Ratl v. Parkinson and others*, 20 L. J., M. C. 210; 17 L. T., O. S. 94; *R. v. JJ. Huntingdon*, 20 L. J., M. C. 208.

(t) *Ante*, p. 227; *R. v. JJ. Hants*, 1 B. & Adol. 654.

(u) *R. v. JJ. Bucks*, 1 B. & C. 495; 2 D. & R. 689; 1 D. & R. Mag. Ca. 369; and see further, as to compelling magistrates to issue a distress warrant, *R. v. Newcombe*,

4 T. R. 368; *R. v. JJ. Stafford*, 3 A. & E. 425; *Painter v. The Liverpool Gas Company*, *Id.* 433; *R. v. Hughes*, *Id.* 425; *R. v. Deverell*, 3 El. & Bl. 372; *R. v. Pilkington*, 2 *Id.* 546; *Ex parte Hughes*, 18 Jur. 447; 23 L. J., M. C. 138; *Ex parte Williams*, 17 Jur. 763; *R. v. Collins*, 16 *Id.* 422; *R. v. Overseers of Kingswinford*, 3 El. & Bl. 689; 23 L. J., Q. B. 337; *Ex parte Grimes*, 22 L. J., M. C. 153; *Re Hartley*, 31 *Id.* 232; *R. v. JJ. Kingston*, El. Bl. & El. 256; 27 L. J., M. C. 199, 201; *R. v. Parker*, 7 El. & Bl. 155; 26 L. J., M. C. 169; *R. v. Boteler*, 33 *Id.* 101.

(x) 11 & 12 Vict. c. 44, s. 5.

shall be stayed till the determination of the appeal. In such cases, after the appeal is decided, if the time limited for making the distress has expired, the magistrate may issue his warrant immediately, without demand, for the time runs from the order (y). By 11 & 12 Vict. c. 43, s. 27, if a conviction or order is affirmed on appeal, the justices who made the conviction or order, or other justices of the same county, &c., may issue a warrant of distress or commitment as if no appeal had been brought. But, if the warrant has been issued before, and suspended by the appeal, it is better, after the decision of the appeal, to apply to the magistrate and state the facts to him before proceeding to the execution of the warrant (z).

Oath, &c., for
levy.

Wherever it is necessary to administer an oath or affirmation of levying any penalty, or making distress in execution of a conviction, a general power is given for that purpose (by 15 Geo. 3, c. 39), to any justice acting under the statute which authorizes the levy.

Warrant of
distress.

The proper mode of proceeding is, for the justice, either forthwith, if immediate payment be enjoined by the statute, or, otherwise, at the expiration of the limited time, to make a warrant (a) in writing under his hand and seal (b), directed to the constable of the parish or district in which the goods to be distrained upon are found. The warrant recites the conviction and adjudication; it then states the non-payment of the penalty and costs, and commands the officer to levy the sums specified. It was held to be no objection to a warrant of distress that, after setting out the conviction, it ordered the money levied to

Form of.

(y) *Wootton v. Harvey*, 6 East, 75; and see *Atkins v. Killy*, 11 A. & E. 777; *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J., M. C. 89, S. C.; *post*, "Appeal."

(z) Per Lawrence, J., 6 East, 79. It seems doubtful whether (except as stated in the text) justices can revoke or suspend the execution

of a warrant after it has once been issued, at all events unless it is a nullity; *Barons v. Luscombe*, 3 A. & E. 589; see *Atkins v. Killy*, *Kendall v. Wilkinson*, *supra*.

(a) See 11 & 12 Vict. c. 43.

(b) See *post*, p. 268; also *Jones v. Johnson and another*, 5 Exch. 862.

be paid to the justices, in order that they might dispose of the same as directed by the conviction (c).

The form of warrant is given in the schedule to the Summary Jurisdiction Rules, 1886, and should be followed in all cases within the Summary Jurisdiction Acts (d). A warrant of distress, founded upon a defective order or conviction, is bad (e). It should be warranted by the conviction (f).

The Summary Jurisdiction Act, 1879, provides that a warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same (g). Defective distress warrant.

In general, the warrant should have appointed a time and place for returning it (h), but this is no longer necessary (i). It is, therefore, returnable when executed (k). Return of.

The warrant may be issued by the justice or justices who made the conviction, or by any justice of the same county or place (l). It may be issued by one justice although the conviction may have been required to be made by two justices (m). By whom issued.

The warrant is directed thus:—"To each and all the constables of ———." To whom directed.

A warrant of distress is to be executed by or under the direction of a constable (n). And if it be delivered to him a reasonable time before the day (if any) appointed for the return he is bound to execute and return it, and is indictable for refusal or wilful neglect (o). For constables By whom executed.

(c) *Wray v. Toke*, 12 Q. B. 492.

(d) See Form 24 in the schedule to the Summary Jurisdiction Rules, 1886.

(e) *Day v. King*, 5 A. & E. 359.

(f) *R. v. Wyatt*, 2 Lord Raym. 1189; *Rogers v. Jones*, 8 B. & C. 409; *Daniel v. Phillips*, 5 Tyr. 293; *post*, "Commitment."

(g) Summary Jurisdiction Act, 1879, section 39.

(h) *R. v. Wyatt*, Fort. 127; 2 Ld. Raym. 1189; 1 Salk. 380.

(i) The 20th and 21st sections of 11 & 12 Vict. c. 43, seem to assume that a time and place will be appointed for the return of the warrant of distress.

(k) *Post*, p. 258.

(l) 11 & 12 Vict. c. 43, s. 19.

(m) *Id.* s. 29.

(n) 42 & 43 Vict. c. 49, s. 43.

(o) *R. v. Wyatt*, Fort. 127; see

who at common law were originally subordinate officers to the conservators of the peace, are now the proper officers of the justices of the peace, who have succeeded to that capacity (*p*).

If the warrant be directed to *all constables generally*, the law is, that no one in particular can execute it out of his own district (unless it has been duly endorsed), it being directed to him only by his name of office, and no one having authority *eo nomine*, out of his district. But if the warrant is directed to a particular constable by name, *he* then may execute it anywhere within the jurisdiction of the magistrate (*q*). If it be directed to more than one person in several or disjunctive terms, it may be executed by any one, but if to two or more jointly, it seems that they all must execute it. When the party named in the warrant employs others to assist him, he should be so near as to be acting in the execution of the warrant at the time of its execution (*r*). The warrant may be executed at any time while it is in force, that is, until it is fully executed. A warrant is not avoided by reason of the justice who signed it dying or ceasing to hold office (*s*). By the stat. 11 & 12 Vict. c. 43, s. 19, if sufficient distress is not found within the jurisdiction of the justice granting the warrant, it may be backed by any justice of any other county or place, and may then be executed by the person bringing the warrant or the person or persons to whom it was originally directed, or by any constable or peace officer of such last-mentioned county or place (*t*).

Backing the
warrant.

Service of
warrant of
English and
Scotch Courts.

Any process issued under the Summary Jurisdiction

2 Ld. Raym. 1189 ; 2 Roll. Rep. 78 ; Hawk. P. C. b. 2, c. 16, s. 5.

(*p*) Fort. 129.

(*q*) Carth. 508 ; Salk. 176 ; Haw. P. C. b. 2, c. 13, s. 30 ; *R. v. Weir*, 1 B. & C. 288 ; 2 D. & R. 444 ; 1 D. & R. Mag. Ca. 319.

(*r*) 5 Burn's Justice, 1132.

(*s*) 42 & 43 Vict. c. 49, s. 37.

(*t*) See *ante*, p. 25, as to backing

warrants. An overseer of a township may execute by deputy a warrant directed to him to levy a rate, such an act being purely of a ministerial character ; *Walsh v. Southworth and others*, 6 Exch. 150. See, as to constables appointing a deputy in cases of necessity, Bac. Ab. "Offices and Officers," L. ; 1 Rol. Ab. 591, tit. "Deputies ;" and *ante*, p. 66.

Acts may, if issued by a Court of summary jurisdiction in England and endorsed by a Court of summary jurisdiction in Scotland, or issued by a Court of summary jurisdiction in Scotland and endorsed by a Court of summary jurisdiction in England, be served and executed within the jurisdiction of the endorsing Court in like manner as it may be served and executed within the jurisdiction of the issuing Court, and that by an officer either of the issuing or the endorsing Court (*u*).

A warrant of distress issued in England when endorsed in pursuance of the Summary Jurisdiction (Process) Act, 1881, is to be executed in Scotland as if it were a Scotch warrant of poinding and sale, and a Scotch warrant of poinding and sale when endorsed in pursuance of that Act is to be executed in England as if it were an English warrant of distress (*x*).

The constable was not protected by the warrant, though valid on the face of it, if the justices had no jurisdiction to issue it; but if they had jurisdiction and acted *inverso ordine* or irregularly, the constable would then be protected (*y*). But now in either event provisions are made for the protection of the officer, which will be fully considered in a subsequent chapter (*z*). Protection of officer.

A person acting under a warrant of distress is not to be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment is not to prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in How executed.

(*u*) 44 & 45 Vict. c. 24, s. 4.

(*x*) 44 & 45 Vict. c. 24, s. 4.

(*y*) *Morell v. Martin*, 4 Scott, N. R. 300; 6 Bing. N. C. 373; *Painter v. The Liverpool Gas Company*, 3 A. & E. 435; and see *R. v. Davis*, 1 L. & C. 64; 30 L. J., M. C. 159. It is doubtful whether a sale under a void warrant passes any property in the goods, even to a *bond fide*

purchaser; *Lock v. Selicood*, 1 Q. B. 736; 1 G. & D. 366, S. C.; see also *Farrant v. Thompson*, 3 Stark. N. P. C. 130; 5 B. & Ald. 826; *Jeanes v. Wilkins*, 1 Ves. 194; *Anon.*, Dyer, 363 a; *Eyre v. Woodfine*, Cro. Eliz. 278.

(*z*) *Post*, "Actions against Constables."

the execution of a warrant of distress, so however that if amends are tendered before action brought, and if the action is brought are paid into Court in the action, and the plaintiff does not recover more than the sum so tendered and paid into Court, the plaintiff is not to be entitled to any costs incurred after such tender, and the defendant is entitled to costs, to be taxed as between solicitor and client.

It is laid down by Mr. Serjeant *Hawkins* (a), that upon the warrant of a justice for levying a forfeiture, where the whole or any part thereof belongs to the Queen, the officer is justified in breaking open outer doors for the execution of the warrant; but there seems to be no such power by law in other cases, where no part of the penalty is vested in the Crown. The constable distraining has no power to impound the goods on the premises, and ought not to remain longer than a reasonable time for the purpose of removing them (b).

Offender a
feme covert.

If the offender be a *feme covert* (who is subject to this species of conviction (c)), and the act of parliament authorize the recovery of the penalty by distress and sale of the offender's goods, the goods of the husband are not liable to be distrained for the penalty (d).

Default of
distress within
jurisdiction.

If the offender was not possessed of sufficient goods to answer the penalty within the jurisdiction of the con-

(a) B. 2. c. 14, s. 5, cites 2 Jones, 233, 234; *Ryan v. Shilcock*, 7 Exch. 72; and quære, whether, when the outer door is broken open, the distress is void? *Ibid.* p. 74; 1 Smith's Leading Cases; Notes to *Scmayne's case*.

Where a statute, as the 22 & 23 Car. 2, c. 25, s. 2, empowered gamekeepers and other persons, authorized by warrant under the hand and seal of any justice of the peace for the county, in the day-time, to search the house of unqualified persons, suspected of having in their custody guns, &c., for the purpose of destroying game, and to seize,

detain and keep the same, to and for the use of the lord of the manor, or to cut to pieces and destroy them,—it was held, in an action of trespass against constables, that this act did not justify the breaking the house to make search, without a previous request and refusal to open it; *Launock v. Brown*, 2 B. & A. 592; *Theobald v. Critchinore*, 1 B. & A. 227; *Parton v. Williams*, 3 *Id.* 330.

(b) *Peppercorn v. Hofman*, 9 M. & W. 618.

(c) *Ante*, p. 80.

(d) 11 Co. 61 b; see *R. v. Johnson*, 5 Q. B. 335.

victing justice, there was formerly no means of prosecuting the levy upon any effects elsewhere; but now, as we have seen, by the statute 11 & 12 Vict. c. 43, s. 19, it is enacted, that in all cases where any penalty, &c., shall be directed to be levied by warrant of any justice, by distress and sale of the goods of any person, if sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then upon proof alone being made on oath of the handwriting of the justice granting such warrant, before any justice of any other county, &c., such justice of such other county shall thereupon make an indorsement on such warrant, signed with his hand, authorizing the execution within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty, &c., may be levied by the person bringing such warrant, or by the person or persons to whom it was originally directed, or by any constable or peace officer of such last-mentioned county, &c., by distress and sale of the goods of the defendant in such other county or place.

And whenever a warrant of distress is issued for the purpose of levying a penalty, or a sum of money (e) ^{Detaining defendant.} ordered to be paid, the justice granting the same may suffer the defendant to go at large, or verbally, or by a written warrant, may order the defendant to be detained in custody until return shall be made to the warrant of distress, unless the defendant shall give security for his appearance at the return of the warrant (f).

Where the defendant has been adjudged by the conviction to pay a sum of money, and on default of payment a warrant of distress is authorized to be issued, and it appears to the justices to whom application is made to issue such ^{Commitment of defendant.}

(e) These words are larger than those of 5 Geo. 4, c. 18, s. 1 (now repealed), which was held to apply only to the recovery of penalties or forfeitures before justices, and not to debts, *e. g.* wages due to a ser-

vant; see *Wiles v. Cooper*, 3 A. & E. 524.

(f) 11 & 12 Vict. c. 43, s. 20. As to enforcing the recognizance, see Summary Jurisdiction Act, 1879, s. 9, *ante*, p. 241.

warrant, that the defendant has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of distress will be more injurious to him or his family than imprisonment, the justices may, instead of issuing the warrant of distress, order the defendant on non-payment of the sum of money to be imprisoned for any time not exceeding the period for which he is liable under the conviction to be imprisoned in default of sufficient distress (*g*); and when an application to issue a warrant of commitment is made to justices under such circumstances, if it appears that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction, the justices shall, by their warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction (*h*).

Whenever penalties are directed to be recovered by distress, but no remedy is provided where no sufficient distress can be found, or no remedy is provided where it is returned that no sufficient goods can be found, the justice to whom such return is made, or any other justice for the same county, &c., may, if he think fit, by his warrant, commit the defendant for any term not exceeding three calendar months (*i*), unless the sum adjudged to be paid, and all costs of the distress, and of the com-

(*g*) 11 & 12 Vict. c. 43, s. 19.

(*h*) 42 & 43 Vict. c. 49, s. 21.

(*i*) As to periods of imprisonment to be imposed in respect of

the default of a sufficient distress see section 5 of Summary Jurisdiction Act, 1879, *post*, p. 276.

mitment and conveying of the defendant to prison (*j*), (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid (*k*). If imprisonment be imposed by statute in failure of sufficient distress, and the defendant has not sufficient to satisfy the amount, the goods ought not to be taken, but the corporeal punishment should be at once resorted to. It is otherwise, however, if there be two penalties, and the goods are sufficient to satisfy only one.

Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the Court of Summary Jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable is not to execute the warrant (*l*). If the party be imprisoned, he may pay to the keeper of the prison the amount of the penalty and costs, and he is then forthwith to be discharged, if he be in custody for no other matter (*m*). Payment before levy.

Except where special provision was made for levying the costs and charges, no more than the bare penalty could in any case be levied, until the statute 18 Geo. 3, c. 19, before mentioned (*n*), which first authorized the justice to give costs: that is now repealed, but a similar power is conferred, as we have seen, by 11 & 12 Vict. c. 43, s. 18 (*o*). Also by sect. 26 of the last-mentioned act, the costs of dismissal of an information or complaint, when costs are given, may be levied by distress, and in default of distress or payment, the prosecutor or complainant may be committed for any time not exceeding one calendar month. Levying for costs.

(*j*) The words "if such justice shall think fit so to order" do not occur in this section, although they are inserted in sects. 21, 23, 24 and 27. These words are again omitted in sect. 26 of the 11 & 12 Vict. c. 43.

(*k*) 11 & 12 Vict. c. 43, s. 22.

(*l*) 42 & 43 Vict. c. 49, s. 43, sub-section 8.

(*m*) 11 & 12 Vict. c. 43, s. 28; and see sect. 31.

(*n*) See *ante*, p. 227.

(*o*) *Ante*, p. 227.

Distress
replevisable.

As to the right of replevying goods taken for a penalty, the result of the modern authorities seems to be, that they are replevisable. Lord Chief Baron *Gilbert* (*p*) had delivered an opinion, that if any inferior jurisdiction issued execution, a replevin was lawful, and the reason assigned was because the inferior jurisdiction being restrained within particular limits, the officer was obliged to show that he took the goods within those limits. A different opinion, however, seems to have subsequently prevailed, and attachments were granted for replevying goods taken under a conviction for a penalty (*q*). But after a full consideration of these cases, the Court of Exchequer decided, in *George v. Chambers* (*r*), that replevin would lie for taking goods under a warrant of distress upon an order of justices requiring the surveyor of a turnpike road to repair it and to pay a certain sum as costs. Lord *Abinger*, C. B., there said, "It is unnecessary to decide whether replevin will lie if goods are taken under a conviction, which is valid; it is enough for us to decide, that if the magistrate has not jurisdiction, either replevin or trespass will lie." Baron *Parke* said, "The question now to be decided is simply whether goods taken under a *pretended* authority can be replevied. *Prima facie* there is no doubt they can, for though in ordinary practice it is applied only to a distress for rent, yet a replevin is at Common Law a remedy applicable in all cases where goods are improperly taken. And I find no satisfactory authority to show that it will not lie where goods are improperly taken under the warrant of a justice. In some cases, no doubt, the Court will interfere to prevent a replevin to save its process from being defeated. The

(*p*) *Gilbert's Replevin*, 161, citing *Mennie v. Blake*, 25 L. J., Q. B. 399; *Aylesbury v. Harvey*, 3 Lev. 204.

(*q*) See *Bradshaw's case*, 6 Bac. Ab. tit. "Replevin" (O); *R. v. Burchett*, 1 Str. 567; *R. v. Sheriff of Leicestersh.*, Barnard. 110; *R. v.*

Monkhouse, 2 Str. 1184. See *Pearson v. Roberts*, Willes, 668, 673, n. (subject to the observations of Blackburn, J., in *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 61); and *Pritchard v. Stephens*, 6 T. R. 522.

(*r*) 11 M. & W. 149.

rule is correctly stated in Chief Baron *Gilbert's* Treatise on Replevin, p. 138. . . . Chief Baron *Gilbert* also says, 'That in cases in which there is no jurisdiction, the goods may be replevied.' " *Alderson*, B., said, "It is true replevin will not lie where there is a judgment of a superior Court, for if you replevied on the first judgment, you could do so on the judgment upon that also, and so there would be replevin on replevin *ad infinitum*. It is different in the case of an inferior jurisdiction, where it is to be set right by the superior" (s).

(2.) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, are not to be taken under a distress issued by a Court of Summary Jurisdiction (t). Protection of wearing apparel, tools, &c., from distress.

It is fully settled, that by the words in an act of parliament authorizing the penalty, "to be levied by distress" is to be understood distress and sale (u). Sale of distress.

Save so far as the person against whom the distress is levied otherwise consents in writing, the distress must be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is so given the sale may be made in accordance with such consent (x).

The officer who sells ought to sell for ready money; and

(s) See also *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58, in which it was held that replevin would lie in the case of goods taken under a warrant of distress issued to enforce payment of costs ordered on appeal against a poor-rate, and *Jones v. Johnson and another*, 5 Exch. 862, 875, where it was held that replevin was maintainable against a magistrate for improperly issuing a warrant under which the plaintiff's goods had been distrained; *S. C. in error*, 7 Exch. 452. In Bul. N. P. 52, it is said, "replevin may be brought in any case, where a man has had his

goods taken from him by another;" see also Com. Dig. Replevin; *Allen v. Sharp*, 2 Exch. 352; *Morrell v. Martin*, 3 M. & G. 581; *Shannon v. Shannon*, 1 Sch. & Lef. 327; *Attorney-General v. Brown*, 1 Swanst. 265; *Morell v. Harvey*, 4 A. & E. 684; *Fenton v. Boyle*, 2 N. R. 399; 5 Burn's Justice, tit. "Warrant of Distress."

(t) 42 & 43 Vict. c. 49, s. 21.

(u) *R. v. Speed*, 1 Salk. 379; 12 Mod. 329; Carth. 502; *R. v. Nash*, 2 Ld. Ray. 990; *Morley v. Stocker*, 6 Mod. 83; *Anon.*, Sir T. Jones, 25.

(x) 42 & 43 Vict. c. 49, s. 43.

if he sells upon credit, he is immediately responsible for the same (y).

Where no period is fixed by the warrant for the sale of the distress, it must take place within fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid (z).

Household
goods.

Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark ; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds (z).

Penalty for
illegal
charges.

Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds (z).

Account of
charges.

A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the clerk of the Court of summary jurisdiction issuing the warrant ; and it shall be lawful for the person upon whose goods the distress

(y) *Semble, Morley v. Stocker*, 6 Mod. 83.

(z) 42 & 43 Vict. c. 49, s. 43. The provisions of this section do not apply to the execution of war-

rants of distress for poor rates, &c., where the warrant is issued by a justice, and not by a court of summary jurisdiction.

was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any reasonable time to be appointed by the Court, and to take a copy of such account (z).

A constable charged with the execution of a warrant of ^{Overplus.} distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant (z).

The constable is not bound to return the warrant itself, ^{Return of} which may be necessary for his own justification (a); and ^{warrant.} therefore it is a prudent precaution in the prosecutor to retain a duplicate of the warrant delivered to the constable, that it may be evidence if required. If the constable refuse to certify what he has done, or if he has ^{Constable} levied the penalty and refuse to pay it over, he may be ^{refusing to} proceeded against by indictment or information; or, it ^{return.} seems, the justices, before whom the warrant was returnable, might fine him. One or other of these is the proper remedy for the prosecutor to resort to, if the requisite duty is not fulfilled; but the Queen's Bench Division will not grant a *mandamus* to a constable to return the warrant on a conviction removed into that Court by *certiorari* (b).

SECT. 3.—Of the Disposition of, and Manner of accounting for, Fines.

All fines for offences created by any penal statute would, ^{Disposal of} if not otherwise appropriated by the statutes themselves, ^{fines.} belong to the Crown (c).

(z) See previous page.

(a) 2 Lord Raym. 1196.

(b) *R. v. Nash*, 2 Lord Raym. 990; *Morley v. Stocker*, 6 Mod. 83,

which is the same case under a different title.

(c) Hawk. P. C. b. 2, c. 26, s. 17; *R. v. Malland*, 2 Str. 828.

Where a penalty is created by statute and nothing is said as to who may recover it, and it is not created for the benefit of a party grieved, and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it (*d*). To enable a common informer to maintain an action for a penalty created by statute, an interest in the penalty must be given to him by express words or by sufficient implication (*d*).

Sundry acts have been passed to regulate the mode of accounting for and paying such fines as arise upon summary convictions before justices. The procedure is now mainly provided by the Summary Jurisdiction Rules, 1886 (*e*).

Under Municipal Corporation Act.

By the Municipal Corporation Act, 1882, every fine or penalty for any offence against that act (the application of which is not otherwise provided for) is to be paid to the treasurer of the borough, and to be carried by him to the account of the borough fund (*f*).

Levying fines, &c.
General regulations.
3 Geo. 4, c. 46.

For all the penalties due to the Crown, concerning the payment of which there is no special statutory direction, the statute 3 Geo. 4, c. 46, s. 2 (*g*), provides a general regulation, by enacting that all such fines which shall be imposed by any justice or justices of the peace shall be certified by him or them to the clerk of the peace of the county, or town-clerk of the city, borough or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on

(*d*) *Bradlaugh v. Clarke*, 8 App. Ca. 354; 52 L. J., Q. B. D. 505.

(*e*) Rule 4 provides that where in pursuance of any statute a court of summary jurisdiction specially directs the appropriation of a fine, the statute under which the appropriation is made is to be set forth in the register and authenticated by the signature of the justice or one of the justices constituting the

court.

(*f*) 45 & 46 Vict. c. 50, s. 231.

(*g*) Since this statute (amended by 4 Geo. 4, c. 37, *post*, p. 260) the Court of Exchequer has no power to deal with such estreats; *R. v. Thompson*, 3 Tyr. 53; see 2 Burn's Justice, tit. "Fines." At what sessions the recognizances may be forfeited, see *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1.

or before the ensuing general or quarter sessions of such county, city, borough or place respectively; and such clerk of the peace or town clerk shall (*h*) copy on a roll such fines, &c., and shall within such time as shall be fixed and determined by such Court, not exceeding twenty-one days after the adjournment of such Court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule to the act (*i*), to the sheriff (*k*) of such county, or the sheriff, bailiff or officer of such city, borough or place having execution of process therein respectively, as the case may be, which shall be his authority for proceeding to the immediate levying and recovering of such fines, &c., on the goods and chattels of such several persons, or for taking into custody the bodies of such persons in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person taken shall be lodged in the common gaol until the next general or quarter sessions of the peace, there to abide the judgment of the said Court (*l*).

By section 3, the clerk of the peace or town clerk is required, before he delivers the roll to the sheriff, to make

(*h*) His duty is imperative; *R. v. JJ. Yorksh.*, 7 A. & E. 591; *ante*, p. 21, n. (*m*).¹

(*i*) By 22 & 23 Vict. c. 21, s. 30, the form of writ in the schedule to that act is substituted for the form in the schedule to this act.

(*k*) This duty of the sheriff is not simply ministerial, nor is he justified in levying a fine, stated in the roll to be unpaid, when the amount has been paid to the sheriff himself before receiving the roll; *Wildes v. Morris*, 22 L. J., M. C. 4; *ante*, p. 21, n. (*m*).

(*l*) Where a party bound in recognizance to keep the peace was subsequently convicted at petty sessions of an assault, and the conviction was returned to the quarter sessions, it was held that the jus-

tices there were not authorized under 3 Geo. 4, c. 46, to order an estreat of the recognizances, but that the proceeding for that purpose should be by *scire facias* as before the act; and the Court of Quarter Sessions having made such order, the Court of Queen's Bench granted a *certiorari* to bring it up for the purpose of its being quashed; *R. v. JJ. West Riding*, 7 A. & E. 583; see *R. v. Cossins*, Parker, 54. It is different if the recognizance is to pay costs; *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1. The recognizance taken for a defendant's appearance, upon the return of a distress-warrant, is to be proceeded upon in like manner as other recognizances; 11 & 12 Vict. c. 43, s. 20.

oath as to all fines, &c., which shall have been paid, or otherwise accounted for.

By section 5 of 3 Geo. 4, c. 46 (*m*), if any person, on whose goods the sheriff is required to levy any such *forfeited recognizance* (*n*), shall give security (*o*) to the sheriff for his appearance at the next general or quarter sessions, then and there to abide the decision of the Court, the sheriff may discharge him out of custody; but if he makes default in his appearance, the Court may forthwith issue a writ of *distringas* and *capias*, or *fieri facias* and *capias*, against his sureties.

By section 6 (*o*), the sessions are authorized to inquire into the circumstances of the case, and at their discretion to order the discharge of the forfeited recognizance, or of any part of the sum to be paid in satisfaction thereof; and if the party is in custody, the sessions may remand or release him, and may award costs to either party.

By section 10 of 3 Geo. 4, c. 46, the clerk of the peace and other officers are entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the clerk of the peace to an allowance of sixpence for every 100 words, for all copies of the roll sent to the lords of the treasury; and a penalty of 50*l.* is imposed on any sheriff, officer or clerk of the peace for neglect of duty.

12 & 13 Vict.
c. 45.

By 12 & 13 Vict. c. 45, s. 17, after reciting the above act (3 Geo. 4, c. 46), it is enacted, that the proceedings subsequent to the authority thereby given for levying and recovering fines, issues, amerciaments and forfeited recognizances, shall be the same in all respects in the case of fines, issues and amerciaments as are by the act required in the case of forfeited recognizances (*p*).

4 Geo. 4, c. 37.

The stat. 4 Geo. 4, c. 37, s. 1, enacts that justices in sessions shall at the following or any subsequent sessions

(*m*) See *R. v. JJ. Yorksh.*, 7 A. & E. 389.

(*n*) And so with regard to fines, issues and amerciaments; 12 & 13 Vict. c. 45, s. 17.

(*o*) See *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621, *S. C.*

(*p*) See sects. 5 and 6 of 3 Geo. 4, c. 46, *supra*.

held after the return of the writ and roll issued from any preceding sessions, at the opening of the Court, insert in any following roll all such fines, forfeited recognizances, &c., as have not been levied or accounted for by the sheriff, &c., or have not been discharged, and so continue such process until it shall be ascertained to the satisfaction of the treasury that the party in default has no goods and cannot be found; it is also provided that the sheriff shall keep the original writs directed to him, and the rolls attached thereto (delivering to the sessions a copy of such rolls on the first day of the sittings of the Court), and such original writs and rolls shall continue in force and be delivered over by the sheriff quitting office to his successor.

By section 3, when a party subject to fines, &c., resides or has removed into another county, the sheriff is to issue his warrant, with a copy of the writ, to the sheriff of the county where the defaulter is, or where his goods are, so that such writ may be executed; and the last-mentioned sheriff must, within thirty days after receipt of the warrant, return to the former sheriff what he has done in the execution of the process.

By section 5, clerks of peace, &c., are to send to the treasury within twenty days from the opening of quarter sessions a copy of the rolls delivered by the sheriff.

The stat. 32 & 33 Vict. c. 49, makes it lawful for the 32 & 33 Vict clerks of justices of the peace to collect fees and fines and ^{c. 49.} penalties payable to the treasurer of the county by means of stamps.

We have seen that penalties may be paid to the constable having the execution of the warrant or to the gaoler or keeper of the prison to which the defendant has been committed (*q*), and it is enacted, by the 11 & 12 Vict. ^{Penalties received by constable or gaoler.} c. 43, s. 31, that in and by the warrant of distress the 11 & 12 Vict. ^{c. 43.} constable or other person to whom the same shall be

directed shall be ordered to pay the amount levied to the clerk of the division in which the justices issuing the warrant shall usually act. So, if the constable or gaoler or keeper of the prison or other person receive the penalty, he is forthwith to pay it to such clerk, and all sums received by the clerk shall forthwith be paid by him to the parties entitled to the same, under the statute on which the information was framed; and if the statute contain no directions for the payment thereof to any person or persons, then the clerk shall pay the same to the treasurer of the county, &c., or place for which such justices shall have acted, and for which the treasurer shall give him a receipt without stamp. The clerk and the gaoler or keeper of the prison is to keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, in the form given by the act (*r*), or to the like effect, and shall once in every month render a fair copy of such account to the justices at the petty sessions for the division in which such justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of 40s., to be recovered by distress; and the said clerk shall send or deliver every return, so made by him as aforesaid, to the clerk of the peace for the county, &c., or place within which such division shall be situate, at such times as the Court of Quarter Sessions for the same shall order in that behalf (*s*). It has been decided that in boroughs having no separate quarter sessions, whether they have a separate commission of the peace or not, penalties are payable to the treasurer of the county (*t*).

Sale of
forfeitures.

All forfeitures not pecuniary which are incurred in respect of an offence triable by a Court of summary jurisdiction, or which may be enforced by a Court of summary

(*r*) See Appendix.

(*s*) See 40 & 41 Vict. c. 43, as to payment of justices' clerks by salary in lieu of fees.

(*t*) *Mayor of Reigate v. Hart*, L.

R., 3 Q. B. 244; 37 L. J., M. C. 70; 18 L. T. 237; *Winn v. Mossman*, L. R., 4 Exch. 292; 38 L. J., Exch. 200; 20 L. T. 672.

jurisdiction, may be sold or disposed of in such manner as the Court having cognizance of the case or any other Court of summary jurisdiction for the same county, borough or place may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the act on which the proceeding for the forfeiture is founded (u).

SECT. 4.—*Of Commitment for Punishment, or in Default of Payment, &c. (v).*

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|--|-----|--|-----|
| 1. <i>Duty of Justices in Committing</i> | 263 | <i>Name of Defendant</i> | 269 |
| 2. <i>For want of Distress</i> | 264 | <i>Style of Magistrate</i> | 270 |
| 3. <i>Postponement of issue of Warrant</i> | 267 | <i>Certainty required</i> | 270 |
| 4. <i>To what Place</i> | 267 | <i>Alleging want of Distress</i> | 272 |
| 5. <i>One Justice may commit</i> | 267 | <i>Time of Imprisonment</i> | 272 |
| 6. <i>Form of Warrant</i> | 267 | <i>Condition of Discharge</i> | 273 |
| <i>In Writing</i> | 268 | 7. <i>Bad in part, when bad altogether</i> | 275 |
| <i>Under hand and Seal</i> | 268 | <i>Scale of Imprisonment</i> | 276 |
| <i>Date</i> | 269 | 8. <i>Hard Labour</i> | 277 |
| | | 9. <i>Execution of Warrant</i> | 277 |

The power of imprisoning is given either as an original punishment, or as the means of enforcing payment of a pecuniary fine, or in any other manner compelling obedience to the sentence of the magistrate.

This power, in regard to offences cognizable by a summary jurisdiction, is derived solely from statute, and is altogether of a distinct nature from that which justices possess in regard to infractions of the peace.

If a statute assigns this mode of punishment in the first instance, it follows immediately upon, and is the legal consequence of, the judgment. But where it is merely subsidiary to enforcing payment of the fine, the magistrate cannot legally commit, unless under the provisions

(u) 42 & 43 Vict. c. 49, s. 39. warrants of distress are applicable
(v) Many of the cases relating to to warrants of commitment.

For want of
distress.

of the before-mentioned statute of 11 & 12 Vict. c. 43 (x), till he has ascertained the want of sufficient goods to answer the penalty; which should regularly be certified by the officer's return to the warrant of distress (y). An action of trespass and false imprisonment was held to lie against a justice of the peace, who, upon a conviction for destroying game, had committed the party forthwith, without endeavouring to levy the penalty on his goods, when it was proved that they were sufficient to answer the amount (z). By 11 & 12 Vict. c. 43, s. 22, in all cases in which statutes authorize the issuing of a warrant of distress (a), but provide no further remedy if no sufficient distress be found, and in all cases of convictions, where the statute on which the same are founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods can be found, the justice to whom the return is made, or any other justice of the same county, &c., may, if he thinks fit, commit the defendant to the house of correction, or if there be no house of correction, then to the common gaol of the county, &c., for which the justice shall be acting, for any term not exceeding three calendar months (b), unless the sums adjudged to be paid shall be sooner paid. Where it appears to the Court that the person has no goods whereon to levy the distress,—or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him,—or that the levy of the distress will be more injurious to him or his family than imprisonment—the Court may commit without issuing a distress warrant (c). Where the proceeds of the distress are sufficient only to pay part of the sum

(x) See *ante*, p. 251.

(y) *R. v. Hawkins*, Fort. 272, per *Parker*, C. J., 11 & 12 Vict. c. 43, ss. 20 and 21.

(z) *Hill v. Bateman*, 1 Str. 710.

(a) This section is extended by 21 & 22 Vict. c. 73, s. 3, to cases

where statutes provide no mode of raising or levying the penalty or compensation, or enforcing payment of the same.

(b) Modified where the sum does not exceed 20*l.*, see *post*, p. 276.

(c) 42 & 43 Vict. c. 49, s. 21.

due, the Court shall, by its warrant of commitment alter the term of imprisonment in default of payment to a term not exceeding the maximum for the unsatisfied balance (*d*).

By 11 & 12 Vict. c. 43, s. 23, in cases where the statute awards imprisonment in the first instance, for a penalty or non-payment of money, that course is to be adopted, and the penalty is not to be levied by distress. By sect. 24 where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that, in case of default, the defendant shall be imprisoned, or imprisoned and kept to hard labour, and default is made, the defendant may be imprisoned for the time (*e*) mentioned in the statute under which the conviction or order was made; and in all such cases, if costs have been adjudged by the conviction or order to be paid by the defendant to the prosecutor or complainant, they may be levied by distress, and, in default of distress, the defendant may be imprisoned in the same gaol for any time not exceeding *one calendar month* (*f*), to commence at the termination of the imprisonment he shall be then undergoing, unless such sum for costs, and all costs and charges of the distress, and also of the commitment and conveying the defendant to prison, if the justice think fit so to order, shall be sooner paid (*g*).

As to an order for commitment of a person making Commitment for nonpayment of a civil debt.

(*d*) *Ibid.*; and see s. 5. Where a statute provides a fine or imprisonment in the discretion of the court for an offence that does not without express directions authorize the committal of the offender in default of payment of a fine imposed, the fine must be recovered by distress warrant under s. 19 of the Summary Jurisdiction Act, 1879, and in default imprisonment

under s. 22. *Re Clew*, 8 Q. B. D. 511; 51 L. J., M. C. 140.

(*e*) See 42 & 43 Vict. c. 49, s. 5, *post*, p. 276.

(*f*) The term of imprisonment must now be regulated in accordance with the scale in s. 5 of Summary Jurisdiction Act, 1879, *post*, p. 276.

(*g*) See *ante*, p. 253, as to levying costs.

default in the payment of a civil debt see the Summary Jurisdiction Act, 1879, s. 35, and the Summary Jurisdiction Rules, 1886, Nos. 20 and 26.

Commitment
for non-
payment of
instalments.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid (*h*). There may be a separate commitment for non-payment of each instalment (*i*).

Before the 5 Geo. 4, c. 18 (*k*), there was no authority to detain the party in custody until return made to the warrant of distress, unless such a power was specially provided by the statute creating the offence, as it was in several; and some statutes expressly direct the commitment to be after due proof, upon oath, of the want of distress (*l*). But now we have seen the party may be detained in custody until the return of the warrant of distress, or may be even committed in the first instance, if it satisfactorily appears to the magistrate that the defendant has not sufficient goods to satisfy the penalty and costs, or that the issuing of the warrant of distress will be more injurious to the defendant or his family than imprisonment.

Upon the return of the want of effects to distrain upon, the justice to whom the return is made ought to issue his warrant of commitment thereupon, under his hand and seal, directed to the constable making the return, or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to prison for the time mentioned in the statute under which the conviction or order was made, unless the sums thereby adjudged to be paid shall be sooner paid (*m*).

(*h*) 42 & 43 Vict. c. 49, s. 7.

(*i*) *Evans v. Wills*, 45 L. J., Q. B. 420; 40 J. P. 552.

(*k*) Now repealed, but re-enacted in this respect by 11 & 12 Vict. c. 43, s. 20.

(*l*) See 50 Geo. 3, c. 108, s. 7.

(*m*) See 11 & 12 Vict. c. 43, s. 21. For the form of warrant in such case, see Form 31 in schedule to Summary Jurisdiction Rules, 1886. Under a provision in the

The Summary Jurisdiction Act, 1879 (*n*), gives justices to whom application is made to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or by an order, or for default of sufficient distress to satisfy any such sum, power to postpone the issue of such warrant until such time and on such conditions as to them may seem just. Postponement of the issue of warrant.

The commitment should be to the common gaol of the county or place for which the committing justice shall then be acting (*o*). To what place.

By 15 Geo. 2, c. 24, justices of a liberty or corporation may commit to the gaol of the county (*p*).

By 11 & 12 Vict. c. 43, s. 29, although *two* justices may be required to convict, a commitment may be legally made by *one*. One justice may commit.

The warrant of commitment is a precept in writing, under the hand and seal of the justice, directed to a con- Form of warrant of commitment.

former act against deer-stealing, 3 & 4 Will. & M. c. 10, adopted into the subsequent act of 16 Geo. 3, c. 30, s. 4, empowering the constable, or the prosecutor, after the conviction, in case the penalty was not forthwith paid, to detain the offender in custody for a reasonable time, till a return could be made to the warrant of distress, not exceeding two days,—Lord Holt said the proceeding ought to be this: “The prisoner, if present, may be detained in custody two days, in which time the justice may make what inquiry he can, if the penalty may be levied by distress; and if he finds there is nothing to distrain then he must make a record of it, by way of adjudication, that it appearing to him the party hath not any goods by which the penalty may be levied, therefore, in pursuance of the statute, he doth award him to prison; which must not be before the end of two days. If the person is absent when convicted, the justice is to make a warrant to

distrain; and if there be nothing upon which a distress may be made, after two days he must make a record thereof, as above, and then issue his warrant of commitment;” *R. v. Chandler*, Holt, 214; Carth. 508; 1 Ld. Raym. 545; *R. v. Wyatt*, 2 Ld. Raym. 1196.

(*n*) 42 & 43 Vict. c. 49, s. 21.

(*o*) 11 & 12 Vict. c. 43, s. 21. Under 24 Geo. 3, sess. 2, c. 55, s. 12, the commitment might be either to the county gaol or house of correction, at the discretion of the justice; see *Ex parte Aston*, 12 M. & W. 456. And see now as to the abolition of the distinction between gaols and houses of correction, 28 & 29 Vict. c. 126, s. 56. By s. 57, every prison, wheresoever situate, shall for all purposes be deemed to be within the limits of the place for which it is used as a prison. See also definition of “prison” in 40 & 41 Vict. c. 21, s. 60.

(*p*) And see *K. v. Amos*, 2 B. & Ald. 533; *R. v. Musson*, 6 B. & C. 74; 9 D. & R. 172; 4 Mau. & Ry. Mag. Ca. 186.

stable and to the keeper of the prison to which the party is to be committed.

The warrant is sufficient if it describe the prison by its situation or other definite description, although it may be known by some other title (*q*).

Commitment
must be in
writing.

An order of final commitment to prison must be in writing (*r*), and the detention of the party without such written authority can be justified no farther than is necessary for making it out (*s*), although an unlawful detention will not vitiate the warrant (*t*). But the detention of a party in custody till the return of a warrant of distress may be by *parol* (*u*). The warrant should be drawn up in writing as soon as possible after the commitment is ordered (*x*).

Essential
contents of
warrant.

By the Summary Jurisdiction Act, 1879, a warrant of commitment is not to be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same (*y*).

Under hand
and seal.

It seems also to have been agreed, even before the passing of the stat. 11 & 12 Vict. c. 43, that the warrant must have been under the hand and seal of the justice (*z*); for, according to *Dalton* (*a*), the seal of the justice is the authority of the officer who ought to give credence thereto. It is laid down by Lord *Hale*, that without this the commitment is unlawful, and the gaoler is liable to false imprisonment (*b*); and it is now expressly required to be thus authenticated by 11 & 12 Vict. c. 43 (*c*).

(*q*) 28 & 29 Vict. c. 126, s. 61.

(*r*) 2 Hawk. c. 16, s. 13; see *Mayhew v. Locke*, 2 Marsh. 377.

(*s*) *Hutchinson v. Lowndes*, 4 B. & Ad. 118.

(*t*) *Van Boven's case*, 9 Q. B. 669.

(*u*) 11 & 12 Vict. c. 43, s. 20; *Still v. Walls*, 7 East, 534.

(*x*) *Re Masters*, 33 L. J., Q. B.

146; but see p. 267 as to postponing issue of warrant.

(*y*) 42 & 43 Vict. c. 49, s. 39.

(*z*) 2 Hawk. P. C. c. 16, s. 13; *Hutchinson v. Lowndes*, 4 B. & Ald. 118.

(*a*) Chap. 196, cites 14 H. 8, c. 16.

(*b*) 1 Hawk. P. C. 583; and see *Bowdler's case*, 12 Q. B. 619.

(*c*) Sect. 21, *et seq.*

The warrant need not be dated, nor state the time from Date. which the imprisonment is to commence; the period of imprisonment will be reckoned from the time of the defendant being taken into custody (*d*). An order for commitment for non-payment of a civil debt is, on whatever day it is issued, to bear date on the day on which it was made (*e*). If the defendant be already in custody undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for the subsequent offence should be forthwith delivered to the gaoler to whom it is directed; and it may be thereby ordered that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant shall have been previously adjudged (*f*).

Where a defendant is summarily convicted at one time of several distinct offences, the justices have power, under sect. 25 of Summary Jurisdiction Act, 1848, to award that the imprisonment under one or more of the convictions shall commence at the expiration of the sentence previously pronounced (*g*). Consecutive terms.

This section applies equally to a case where a defendant is at one and the same time sentenced for several offences, as to a case in which he is already in prison (*g*).

A Court of summary jurisdiction cannot, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months (*h*).

The warrant should name the defendant correctly. Name of defendant.

(*d*) *Bowdler's case*, 17 L. J., Q. B. 243; 12 Q. B. 612, 619; *Ex parte Foulkes*, 15 M. & W. 612; *Braham v. Joyce*, 4 Exch. 487; overruling in this respect *Re Fletcher*, 1 D. & L. 726; see also *Newman v. Lord Hardwicke*, 8 A. & E. 124; *Henderson v. Preston*, 21 Q. B. D. 362; 57 L. J., Q. B. D. 607.

(*e*) Rule 20 of the Summary Jurisdiction Rules, 1886.

(*f*) 11 & 12 Vict. c. 43, s. 25.

(*g*) *R. v. Cutbush*, L. R., 2 Q. B. 379; 36 L. J., M. C. 70. A separate commitment for each conviction should be issued, one to commence and take effect on the expiration of the other.

(*h*) 42 & 43 Vict. c. 49, s. 18.

Where it directed the constable to take *John Hoyer*, and he arrested the party against whom the information was laid, and against whom the magistrate intended to issue his warrant, and who was supposed to be called John Hoyer, but whose name really was *Richard*; in an action by him against the constable for false imprisonment, the warrant was held not to afford any defence, and it was also decided that in such a case a demand of perusal and a copy of the warrant was unnecessary (*i*).

Style of
magistrate.

According to *Hawkins*, the warrant ought to express, not only the name of the justice, but his office or authority (*k*). It is said, indeed, to have been laid down by Lord *Holt*, on a commitment returned by *Habeas corpus*, that the authority need not appear in the warrant; and that it is sufficient, if it be stated in the return (*l*). This is in some measure confirmed by Lord *Hale*, who says, "the mention of the name and authority of the justice, in the beginning of the *mittimus*, is not always necessary; the seal and subscription of the justice to the *mittimus* is a sufficient warrant to the gaoler, for it may be supplied by averment that it was done by the justice" (*m*).

But, however this may be in commitments for breach of the peace, or for safe custody only, it is most regular in commitments on summary convictions, when they are by way of punishment, to insert the name and authority of the committing magistrate; and such statement will be found in the forms of warrant given in the schedule to the Summary Jurisdiction Rules, 1886.

Certainty
required.

The offence for which the defendant is committed should be stated in a warrant of commitment with the same clearness and precision as in a conviction. It should shew that the defendant has been convicted of an offence over which the justices have jurisdiction (*n*). The commitment

(*i*) *Hoyer v Bush*, 1 M. & G. 775 ;
see also *Kelly v. Lawrence*, 33 L. J.,
Exch. 197.

(*k*) 2 Hawk. P. C. c. 16, s. 13.

(*l*) 2 Id. Raym. 980 ; 3 Salk.
284.

(*m*) 2 H. P. C. 122.

(*n*) *Re Peerless*, 1 Q. B. 143.

should recite clearly the conviction of the defendant and the amount of his punishment.

If a warrant of commitment is defective or informal it cannot be recalled, withdrawn, or altered. It cannot be amended like the information, but if there is any error in it, a fresh commitment may be lodged with the governor of the prison, upon which the defendant may be detained (o).

Warrant
cannot be
amended.

By the 3 & 4 Will. 4, c. 53, one of the acts against smuggling, it was provided by sect. 90, that the justices might amend any conviction or warrant of commitment, whether before or after conviction. Four days after the committal of a party, who had been convicted under that act, the warrant, which was defective in point of law, was withdrawn from the gaoler's possession, and another substituted, it did not appear by whom. The second warrant was of the same date, and signed and sealed by the same justices as the first, and did not materially vary from it, except that in the recital of the conviction certain cordage was stated to be adapted for "slinging" casks, instead of "slinging or sinking;" and the name of the place, at which the party was stated to have been detained for his offence, was altered. The above facts, and copies of the warrants, being returned on *certiorari* and *habeas corpus*; it was held, that the Court could not presume, either from the facts returned, or from the warrants, that the second warrant was substituted by the justices, as an amendment of the first, in pursuance of the authority given them by the act; and that the prisoner therefore was entitled to be discharged (p).

Amendment
of warrant,
under a special
provision in
an act of
parliament.

The magistrates are not bound by the conviction first drawn up, whether it is recited in the commitment or not, and may substitute a more formal one if it be according to the facts of the case as proved, and this may be done at

(o) *Ex parte Smith*, 27 L. J., M. C. 186; 3 H. & N. 227; *Ex parte Cross*, 26 L. J., M. C.

(p) *In re Elmy*, 1 Ad. & E. 843; 3 Nev. & M. 733; 1 Nev. & Man.

Mag. Ca. 378; *R. v. Chaney*, 6 Dowl. 281, 289; see *ante*, p. 234, as to substituting a good for a bad warrant.

any time before the conviction has been quashed, or the defendant discharged from custody, by reason of its invalidity (*q*).

Where should
allege want of
distress.

Where imprisonment is only inflicted by the statute as an alternative punishment for want of sufficient distress, the commitment ought to notice that as the fact (*r*).

Time of im-
prisonment
and condition
of discharge,
&c.

It must be distinctly expressed in the warrant, whether the commitment be for a certain time, or only till the payment of a fine. The defendant ought to know for what he is in custody, and how he may regain his liberty (*s*). Therefore, if he be committed for the fine, it ought to be till he pay the fine: if the intent be to punish him not only by fine, but by imprisonment, it ought to order imprisonment for such a time, and from thence also till he have paid the fine. A warrant, reciting that the party had been convicted by the College of Physicians, and fined 20*l.*, and was thereby committed to gaol till *he should be delivered by the said college*, or otherwise by due course of law, was held to be bad, as being too general, and not sufficiently ascertaining whether the commitment was a distinct punishment, or merely for enforcing the fine (*t*).

The time for which the party is committed, and the condition upon which he is to be discharged, must strictly conform to the directions of the statute from which the authority is derived. Thus, a warrant for the commitment of the putative father of a bastard child, "until he should pay the sum due, or until he should be otherwise delivered by due course of law," was held to be bad; the magistrate not being authorized, under 49 Geo. 3, c. 68, s. 3 (*u*), to make such a warrant, which ought to have given the party committed the option either of paying the money, or of

(*q*) *Ante*, p. 237.

(*r*) 11 & 12 Vict. c. 43, s. 21. See form 31 in schedule to Summary Jurisdiction Rules, 1886.

(*s*) *Dr. Groenvell's case*, 1 Ld. Ray. 213; see *R. v. Rogers*, 1 D. & R. 156; *R. v. Helps*, 3 M. & S. 331; *Ex parte Addis*, 2 D. & R.

167; and see *ante*, p. 206, where there are several defendants.

(*t*) *Dr. Groenvell's case*, *supra*; and see *Prickett v. Gratrex*, 8 Q. B. 1020; *Ex parte Besset*, 6 Q. B. 481.

(*u*) Repealed, Stat. Law Rev. Act, 1872 (No. 2).

staying three months in prison, and being thereby altogether discharged from the payment (*v*).

If the imprisonment be not for any certain period, but generally till the payment of a fine, or the performance of some other act, the condition must be distinctly expressed, and such as is authorized by statute. If it be till payment, the sum must be fixed. Thus, a conviction and commitment of the defendants for a forcible entry, "there to remain till they shall have paid a fine to the king," the justices not having assessed any fine, was held to be irregular (*x*).

Should specify condition of discharge.

So, under the statute 6 Geo. 1, c. 16, s. 1, which empowered the magistrate to commit till the penalty and charges were paid, a commitment for nine months, or until the sum of 15*l.*, "together with the charges previous to, and attending the conviction, shall be paid," was held to be bad; for want of ascertaining the exact sum, by the payment of which the defendant might be released (*y*). The same point was determined on a commitment by justices of the defendant, a toll-gate keeper, for refusing to account, "and until he do account and pay what shall be due to the proprietors of the toll." This was decided to be an illegal commitment, because no certain sum was thereby appointed to be paid; so that the defendant might remain in prison for life (*z*).

Till payment, &c. of indefinite sum, bad.

In like manner, where a conviction took place on the Stage-Coach Act, 50 Geo. 3, c. 48, and the commitment recited the conviction, from which it appeared, that the defendant had been committed by the justices for three months, "unless, before that time, he pays the sum of 6*l.*, together with the expenses of the warrant, viz., a sum of shillings," without specifying the sum which he was

(*v*) *Robson v. Spearman*, 3 B. & Ald. 493. As to time of the commencement of imprisonment appearing, see *ante*, p. 269.

(*x*) *R. v. Elwell*, 2 Ld. Raym. 1514; Str. 794; so the costs must

be ascertained and stated in the warrant; 11 & 12 Vict. c. 43, s. 21; see *ante*, p. 269.

(*y*) *R. v. Hall*, Cowp. 60.

(*z*) *R. v. Catherall*, Fitz-Gib. 266.

to pay for expenses ; the Court held, on the authority of *R. v. Hall* (a), that the commitment was bad on the face of it ; “ for the defendant here cannot know on what terms he is to be discharged, and the gaoler is equally in the dark. The conviction and commitment should have ascertained precisely what sum for expenses the defendant was to pay ” (b).

By due course
of law.

Under the act 35 Eliz. c. 2, which empowered the justice to examine into certain matters, and commit such persons as refused to answer, a commitment “ till discharged by due course of law,” was held to be bad (c). So, where justices committed a defendant for a contempt, “ *until he should be discharged by due course of law*,” the Court held that, this being a commitment for punishment, and no time certain mentioned, it was bad on the face of it, and ordered the defendant to be discharged (d).

Condition of
discharge
must agree
with the
cause of con-
viction.

And where justices committed the late overseer of a parish, under 17 Geo. 2, c. 38, upon a conviction (on the complaint of the succeeding overseers) for neglecting and refusing to deliver over a certain *book* belonging to the parish, called *The Bastardy Ledger*, and committed him, in pursuance of their adjudication, “ until he should have yielded up *all and every the books concerning his said office of overseer belonging to the parish*,”—the Court held the commitment void *in toto* ; as the condition annexed to the imprisonment extended beyond what was previously required of him (e).

A commitment by the Vice-Chancellor of Oxford, stating the offence to be carrying goods without a licence, and ordering the party to remain in custody, till he should give security to carry no more, and to observe the statutes

(a) Cowp. 60.

(b) *R. v. Payne*, 4 D. & R. 72 ;
1 D. & R. Mag. Ca. 67.

(c) *Foxley's case*, 1 Salk. 351.

(d) *R. v. James*, 1 D. & R. 559 ;
1 D. & R. Mag. Ca. 131 ; 5 B. & A.
894. It was, however, by no means

taken for granted in this case, that
justices have power to commit for
a contempt.

(e) *Groome v. Forrester*, 5 M. &
S. 314 ; and see *Leary v. Patrick*,
15 Q. B. 266.

of the university for life, was adjudged to be an illegal commitment (*f*).

If a commitment be bad in part, it is, in most instances, bad *in toto*. Where a party was committed until he paid two several sums of money, one of which was not due, the Court quashed the commitment altogether (*g*). Warrant bad in part.

By stat. 18 Geo. 3, c. 19, s. 1, justices were empowered to award costs upon non-payment of a poor rate, but the period of imprisonment in case of non-payment of the costs was limited to one month. A warrant under that act, reciting non-payment of the rate and costs, and the sum total to which they amounted, and directing the constable to take the defendant to prison, "there to remain until payment of the *said sum*," was held bad *in toto*, and a party arrested under it, who had paid the money under protest, was held entitled to recover the whole amount so paid, although the rate was really due (*h*). But where the legal can be distinguished from the illegal part, and there has been a demand and seizure only in respect of the legal part, the warrant is good, and affords a justification to that extent (*i*). In the case which led to this decision; *Parke, B.*, said, "On the face of the warrant, the sum demanded for the rate (which on this branch of the argument is assumed to be legally demanded) is distinguished from the sum which is assumed to be illegally demanded; the rate legally due was duly claimed and refused, and the plaintiff had the means of tendering the precise sum to save the necessity of seizing or selling, and

(*f*) *R. v. Barnes*, 2 Str. 917; *vide R. v. James*, 5 B. & A. 894; 1 D. & R. 559; 1 D. & R. Mag. Ca. 131.

(*g*) *Ex parte Addis*, 2 D. & R. 167; 1 D. & R. Mag. Ca. 196; 1 B. & C. 90; see *Goff's case*, 3 M. & S. 203; *Skingley v. Surridge and another*, 11 M. & W. 503, 516.

(*h*) *Clark v. Woods and others*, 2 Exch. 395; and see *Sibbald v.*

Roderick, 11 A. & E. 38, where a warrant issued for a single sum made up of regular and irregular rates.

(*i*) *Skingley v. Surridge and another*, 11 M. & W. 503, 515; on this ground distinguished in the judgment from *Milward v. Caffin*, 2 W. Bla. 1330; *Hurrell v. Wink*, 8 Taunt. 369; and *Sibbald v. Roderick*, *supra*.

Scale of imprisonment.

nothing was done under that distress, which the warrant to distrain for the poor rate did not justify" (*k*).

The period of imprisonment imposed by a Court of summary jurisdiction, under the Summary Jurisdiction Act, 1879, or under any other act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum (*l*), shall, notwithstanding any enactment to the contrary in any past act, be such period as in the opinion of the Court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale (*m*); that is to say,

| | |
|--|----------------------------------|
| Where the amount of the sum or sums of money (<i>n</i>) adjudged to be paid by a conviction, as ascertained by the conviction, | The said period shall not exceed |
| Does not exceed ten shillings . . . | Seven days. |
| Exceeds ten shillings but does not exceed one pound . . . | Fourteen days. |
| Exceeds one pound but does not exceed five pounds . . . | One month. |
| Exceeds five pounds but does not exceed twenty pounds . . . | Two months. |
| Exceeds twenty pounds . . . | Three months. |

And such imprisonment shall be without hard labour, except where hard labour is authorized by the Act on

(*k*) See also 12 & 13 Vict. c. 14, and *Walsh v. Southworth and others*, 6 Exch. 150. By 11 & 12 Vict. c. 44, s. 4, it is enacted, that no action shall lie against a justice for granting a distress warrant against any person named and rated in a poor-rate, which has been made, allowed and published, by reason of any defect in the rate, or of such person not being rateable.

(*l*) This section applies also to money adjudged upon orders not enforceable as civil debts (42 & 43 Vict. c. 49, s. 47), and to arrears under bastardy orders and other

orders enforceable as such (s. 54).

(*m*) Where the sum due, by payment of instalments or the net proceeds of distress is reduced so that the unsatisfied balance would subject to a shorter term of imprisonment, the court to whom application is made for a commitment shall by its warrant revoke the term fixed in the adjudication, and order the defendant to be imprisoned for a term not exceeding this scale (s. 21).

(*n*) That is, the total amount including costs. (S. 49.)

which the conviction is founded, in which case the imprisonment may, if the Court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorized by the said Act (o).

If the statute orders a commitment with hard labour, it should be so signified in the warrant. Hard labour can only be adjudged when authorized by the special Act under which proceedings are taken; but it has been held that where an Act authorizes imprisonment with hard labour or a penalty, in the discretion of the Court, the imprisonment in default of distress to enforce the penalty may be with hard labour (p). Although this decision has not been overruled, it cannot be relied on as an authority for the proposition. In offences for which hard labour may be given, the commitment need not expressly negative the hard labour, it being presumed that it is not ordered unless stated (q). Where a penalty is recoverable under the Summary Jurisdiction Act, 1848 (s. 22), hard labour cannot be added. A conviction adjudging hard labour when not authorized by the statute creating the offence would be quashed by the Queen's Bench Division as of course, and justices would be liable for the consequences of acting without jurisdiction (r).

Where a Court of summary jurisdiction has authority under any act to impose imprisonment, the Court may impose the same without hard labour, and reduce the prescribed period thereof (s).

The warrant is directed "to the constables of C., and to

Mitigation of punishment by Court.

Execution of warrant of commitment.

(o) "Month" means "calendar month," *ante*, p. 61. A sentence of one calendar month ends at the first moment of the corresponding day of the succeeding month (*Miggotti v. Colville*, *ante*, p. 62).

(p) *R. v. JJ. Tynemouth*, 16 Q. B. D. 647; 55 L. J., M. C. 181. This decision was not followed in *R. v. Turnbull*, 32 L. T. 64.

(q) *Ex parte Thompson*, 24 J. P.

805.

(r) *In re Clew*, 8 Q. B. D. 511; 51 L. J., M. C. 140. The treatment of a convicted person not sentenced to hard labour legally includes the wearing of prison clothes, sleeping on a plank bed, picking oakum, and prison fare. *Kennard v. Simmons*, 50 L. T. 28; 48 J. P. 551.

(s) 42 & 43 Vict. c. 49, s. 4.

the Governor of Her Majesty's prison at ,” and may be executed anywhere within the jurisdiction of the convicting magistrate. But formerly, except the constable who was specifically named, the others could only execute it each within his own precinct (*t*).

It has been held that a warrant of commitment directed “to the constable of G.,” a parish in the county of L., must be read as directed to the parish constable of G., there being such an officer, who must execute it, and that its execution by any other policeman was illegal (*u*).

It is now provided, as we have seen, by 11 & 12 Vict. c. 43, s. 3, that such warrant may be backed for the purpose of execution out of the jurisdiction of the justice who first granted the warrant (*x*).

Production of
warrant.

The officer at the time of the arrest should have the warrant ready to be produced, if its production should be required by the party arrested (*y*).

Cannot be on
Sunday.

It has been held, that by the construction of the statute 29 Car. 2, c. 7, s. 6, which prohibits the execution of any process, warrant, &c., on the Lord's Day (except in cases of treason, felony or breach of the peace), a warrant of commitment for a penalty cannot be executed on a Sunday, that the apprehension on that day is wholly void, and the defendant is entitled to be discharged out of custody (*z*).

(*t*) *Blatcher v. Kemp*, Maidstone Summer Assizes, 1782; 1 H. Bl. 15, n. In — *v. Norman*, 1698, it was ruled by *Holt*, C. J., that a constable may execute the warrant of a justice of peace, &c., out of his liberty, but he is not compellable to do so. This, it may be supposed, is upon the presumption that he is mentioned *by name* in the warrant; and see *Gimbert v. Coyney*, 3 D. & R. Mag. C. 323.

(*u*) *R. v. Saunders*, L. R., 1 C. C. R. 75; 36 L. J., M. C. 87.

(*x*) *Ante*, p. 25. The authority to borough constables to execute warrants of apprehension within seven miles of the borough (45 & 46

Vict. c. 50, s. 223) does not extend to warrants of commitment, such warrants must be backed; *R. v. Cumpton*, 5 Q. B. D. 841; 49 L. J., M. C. 41, under a similar section in the repealed 5 & 6 Will. 4, c. 76.

(*y*) *Galliard v. Laxton*, 2 B. & S. 363; 31 L. J., M. C. 123.

(*z*) *R. v. Myers*, 1 T. R. 265, on the Lottery Act; *Taylor v. Freeman*, Sel. N. P. 921 (9th edit.); *Re Ramsden*, 3 D. & L. 754; *Ex parte Eggington*, 2 El. & Bl. 717; 23 L. J., Q. B. 106, S. C. In *Taylor v. Phillips*, 3 East, 155, Lord *Ellenborough*, C. J., said that it was a matter of public policy that no proceedings of the nature described

Nor can a prisoner so arrested be legally detained under a second warrant subsequently lodged against him, which has been issued at the instance of the same parties, though not in the same capacity, *e. g.*, as commissioners under a local act instead of as a town council. But a detainer under a *ca. sa.*, subsequently issued by a third party and without collusion, is a valid ground for refusing to discharge the prisoner (*a*).

If the offender be already in execution in the Queen's Bench, he may be there charged criminally by a justice's warrant, but cannot be taken out of the custody of that Court, and sent to the county gaol (*b*). Whenever a defendant already in custody is adjudged to be imprisoned upon any information, the warrant of commitment for such subsequent offence should be forthwith delivered to the gaoler to whom it is directed, and the justice if he thinks fit, may order by the said warrant that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant shall have been previously adjudged or sentenced (*c*). So by 11 & 12 Vict. c. 43 (*d*), these charges may be imposed on the defendant.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not, as a general rule, admit of bail (*e*).

But, if the commitment be till payment of a certain fine,

in the statute should be had on a Sunday, and that they could not be made good by any assent or waiver by the party illegally arrested. The statute of Charles authorizes arrest on a Sunday for any *indictable* offence; *Rawlings v. Ellis*, 16 M. & W. 172; see also 11 & 12 Vict. c. 42, s. 4.

(*a*) *Ex parte Eggington and Re Ramsden, supra*; see also *Eggington v. The Mayor, Aldermen, and Citizens of Lichfield*, 5 E. & B. 100; 1 Jur., N. S. 908.

(*b*) *R. v. Woodham*, 2 Str. 828; see *Brandon v. Davis*, 9 East, 154,

and *Guthrie v. Ford*, 4 D. & R. 271, where it was held, that a prisoner, under criminal process in the house of correction, cannot be brought up by *habeas corpus*, for the purpose of being charged in the custody of the marshal, upon a bailable writ, and re-committed to his former custody so charged.

(*c*) 11 & 12 Vict. c. 43, s. 25.

(*d*) See ss. 21—24, 26, 27 *ad finem*.

(*e*) *Anon.* 11 Mod. 45, 52; *R. v. Brooke*, 2 T. R. 190; *post*, p. 286.

Where
offender
already in
custody.

Charges of
commitment.

Discharge.

Tender of
penalty.

it follows of course, and is moreover now expressly provided by the 11 & 12 Vict. c. 43, s. 28, that the party is entitled to be set at liberty upon tender or payment thereof (*f*). Where an officer, after a tender of a penalty, persisted in conveying a person to gaol, insisting also upon the payment of a further sum indorsed by the justice on a warrant, under the name of costs, he was held liable to an action of false imprisonment (*g*). This was in a case, however, where the magistrate had no special power, by the act, to commit for costs; where he has such power and exercises it, the costs must be tendered as well as the penalty (*h*). The tender must be to the party authorized to receive the amount. Where a warrant directed the constable to take the defendant to gaol, and there to deliver him to the keeper, who was to detain him for three months, unless he should sooner pay the money to the overseers, the constable executing the warrant was held not to be authorized to receive the money (*i*). But a warrant, issued by a competent Court and good on the face of it, protects the keeper of the prison who obeys it according to its terms, and he will not be liable to an action for false imprisonment if he detains the prisoner for the full term mentioned in the warrant (*k*).

Compelling
the issuing
of warrant.

Where it was doubtful, whether the convicting justices had power to issue a warrant of commitment, the Queen's Bench Division would not grant a *mandamus* to compel them to do so (*l*).

(*f*) So by 24 & 25 Vict. c. 96, s. 107. According to Dalton, he might have been released, upon his finding sureties to pay it; Dalt. c. 170, s. 12, and *Chaddock v. Wilbraham*, 5 C. B. 650.

(*g*) *Smith v. Sibson*, 1 Wils. 153.

(*h*) *Walsh v. Southworth and others*, 6 Exch. 150; *Atkins v. Kilby*, 11 A. & E. 777.

(*i*) *Atkins v. Kilby*, *supra*, and see *Id.* as to taking the prisoner by the most convenient, though a cir-

cuitous, route.

(*k*) *Henderson v. Preston*, 21 Q. B. D. 362; 57 L. J., Q. B. 607.

(*l*) *R. v. Twyford*, 5 Adol. & E. 490; *R. v. Lord Godolphin*, 8 A. & E. 338; *Ex parte Fulder*, 8 Dowl. 535; *Re Williams*, 9 Q. B. 976. In the latter case, the party had been previously committed for the same offence, but had been discharged on *habeas corpus*. The Court, in the exercise of its discretion, refused to interfere, although it was suggested

The warrant of commitment, unless it is expressly made returnable at a particular time, remains in force till it be fully executed. A warrant of commitment is not avoided by reason of the justice who signed the same dying or ceasing to hold office (*m*). If the offender be apprehended, and suffered to go at large, upon an offer to find security, which is not fulfilled, it seems that he may be apprehended again upon the same warrant (*n*). Warrant in force till return day.
Liberation on condition not fulfilled.

The preceding statements as to the requisites of a warrant of commitment are subject to the provision contained in the Summary Jurisdiction Act, 1879, viz., that a warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same (*o*).

that the discharge had taken place on account of a defect in the warrant. In *R. v. Codd*, 9 A. & E. 682, a mandamus was granted to compel the issuing of a warrant of commitment upon an order of affiliation.

(*m*) 42 & 43 Vict. c. 49, s. 37.

(*n*) *Dickenson v. Brown*, Peak. N. P. C. 234. That was the case of a warrant to apprehend the putative father of a bastard child. See *post*, "Certiorari."

(*o*) 42 & 43 Vict. c. 49, s. 39.

CHAPTER III.

OF APPEAL TO THE SESSIONS.

| | |
|---|--|
| 1. <i>In what Cases Appeal lies</i> . . . 282 | 3. <i>Time and Place of Appeal—</i> |
| 2. <i>Notice and Recognizance</i> . . . 287 | <i>the Hearing, Costs, &c.</i> . . . 297 |

SECT. 1.—*Of Appeal to the Sessions, when it lies (a).*

| | |
|---|--------------------------------------|
| 1. <i>How authorized</i> 282 | 3. <i>Suspension of Execution by</i> |
| 2. <i>Must be expressly given</i> 282 | <i>Appeal</i> 285 |

How autho-
rized.

AN appeal from the conviction of justices to the sessions is not a matter of common right, but of special provision (b).

The privilege of appeal, which now usually accompanies the power of summary conviction given by statute, does not seem to have been introduced till after that mode of judicature had been in use for some time (c).

Must be
expressly
given.

A right of appeal must be given by express enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated (d).

The right of appeal is now somewhat enlarged by the Summary Jurisdiction Act, 1879 (e), which enacts that

(a) The justices, as we have seen, ought to return the conviction to the sessions, and this whether an appeal be given in the particular case or not; *ante*, p. 237. If a magistrate, after receiving due notice of appeal, neglects to return the conviction, whereby the party is prevented from prosecuting his appeal, he is liable in an action for the special damage; *Prosser v. Hyde*, 1 T. R. 414. When an appeal is the only remedy and replevin does not lie; *The Mersey Docks Company v. Cameron*, 9 C. B., N. S. 812; 30 L. J., M. C. 185, 195; *R. v. Bradshaw*, 29 *Id.* 176. A party is not bound to appeal against a rate

made without jurisdiction; *The Governor of Bristol Poor v. Wait*, 1 A. & E. 264; *Freeman v. Read*, 4 B. & S. 174.

(b) 1 M. & S. 448, and 6 East, 514; 2 T. R. 509, 510; *R. v. Cashibury*, 3 D. & R. 35; *R. v. Hanson*, 4 B. & Ald. 521.

(c) See *ante*, p. 12.

(d) *R. v. Stock*, 8 A. & E. 405; *R. v. Recorder of Bath*, 9 *Id.* 871; *R. v. Recorder of Ipswich*, 8 Dowl. 103; see *Lefevre v. Miller*, 8 El. & Bl. 231; 26 L. J., M. C. 175; *Christie v. St. Luke, Chelsea*, 8 El. & Bl. 992; 27 L. J., M. C. 153.

(e) 42 & 43 Vict. c. 49, s. 19.

where, in pursuance of any act, whether past or future, any person is adjudged by a conviction or order of a Court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or for failing to do, or to abstain from doing, any act required to be done or left undone, and such person is not otherwise authorized to appeal to a Court of general or quarter sessions, and did not plead guilty or admit the truth of the information or complaint, he may, notwithstanding anything in the said act, appeal against such conviction. It is provided that such right of appeal shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

It will be noticed that this general right of appeal is only against a sentence of *imprisonment*. The right of appeal given by special acts generally goes much further (*f*). An appeal lies in almost every case from a conviction in the metropolis (*g*).

Where a person charged before a Court of summary jurisdiction with an indictable offence under s. 12 of the Summary Jurisdiction Act, 1879, consents to be dealt with summarily and is thereupon convicted, he has no right of appeal to quarter sessions under s. 19 of that act which gives a right of appeal from convictions by a Court of summary jurisdiction "in pursuance of any act whether past or future" (*h*). There is no appeal against the dismissal of an information or complaint (*i*).

As a right of appeal cannot be extended by equitable construction (*k*), so the operation of a general clause in an

(*f*) See s. 10 of Prevention of Cruelty to Children Act, 1889; s. 7 of Public Health Amendment Act, 1890; and s. 125 of Public Health (London) Act, 1891.

(*g*) 2 & 3 Vict. c. 71, s. 50.

(*h*) *R. v. JJ. London*, [1892] 1 Q. B. 664.

(*i*) *R. v. JJ. London*, 25 Q. B. D. 357; 59 L. J., M. C. 146; *Payne v. JJ. Uxbridge*, 45 J. P. 327, 420.

(*k*) *R. v. Hanson*, 4 B. & A. 519, in which *Abbott*, C. J., said, "although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given

act of parliament, which gives the right of appeal, cannot be excluded by inference only, without some positive enactment in the statute on the matter in question. Thus, a clause in a private Inclosure Act declared that no item or charge in the account of the commissioners should be *binding* on the parties concerned, unless the same should have been duly allowed by a justice of the peace; and by a subsequent clause an appeal was given to the party grieved by anything done in pursuance of that or the General Inclosure Act, "other than and except such determinations, as were by that or the General Inclosure Act declared to be *binding*, final, and conclusive." It was argued against the right of appeal, that although the clause relating to the accounts of the commissioners did not expressly state that they were to be binding and conclusive when allowed by a justice, yet that it must be so inferred; for to say, that the accounts shall not be *binding* until allowed, is in effect saying, that when allowed they shall be binding. But the Court held, that the words "binding, final, and conclusive," in the excepting part of the appeal clause, must be confined to those proceedings which were made binding, final, and conclusive by some affirmative declaration in the statute; and that there being no such declaration in the present instance, the appeal was not taken away (*l*). It appears, however, that if an order of commitment be excepted out of the appeal clause, a conviction and commitment comprised in one instrument cannot be made the subject of appeal.

Under the Highway Act (27 & 28 Vict. c. 101), s. 21, when any highway board consider any highways unneces-

by statute;" and see *R. v. Bedwell*, 4 El. & Bl. 213; 24 L. J., M. C. 17. Some statutes limit the appeal according to the amount of penalty imposed, and in such cases, in order to see whether an appeal lies, the amount must be estimated exclusive of costs; *R. v. JJ. Warwicksh.*, 6 E. & B. 837; 25 L. J., M. C. 119; and see *Ricardo v. The Maiden-*

head Board of Health, 2 H. & N. 257; 27 L. J., M. C. 73.

(*l*) *R. v. JJ. Cumberland*, 1 B. & C. 64; *R. v. Bedwell*, 4 El. & Bl. 213; 24 L. J., M. C. 17, S. C.; and as to the granting of a rule to hear an appeal, see *R. v. JJ. Buckinghamsh.*, 4 El. & Bl. 259; *Re Blues*, 5 El. & Bl. 291; 24 L. J., M. C. 138.

sary for public use, they may direct the district surveyor to apply to two justices to review the same, and thereupon "the like proceedings shall be had as where application is made under the Highway Act, 1835, to procure the stopping up of a highway;" and this has been held to give an appeal against the certificate, or order of the justices declaring it to be unnecessary (*m*).

The question whether execution is suspended by an appeal mainly depends upon the statute under which the conviction or order is made. In some cases execution is expressly stayed pending the appeal, in others it is stayed on certain conditions; in some few cases, where no such express terms are found in the act, it may be right to allow execution to go notwithstanding the appeal, in order to give full effect to the intention of the legislature; but, as it has been said, "in the vast majority of cases it would be exceedingly improper in the justice to grant a warrant after the notice and recognizance, and before the hearing of the appeal, or before the time for hearing it has expired; and acting from a corrupt motive, he might be liable to an action on the case for maliciously granting it" (*n*). On the occasion which led to these observations, it was decided by the Court of Queen's Bench that the jurisdiction of a magistrate under 7 & 8 Vict. c. 101, s. 3, at any time after the expiration of one month from the making of an order for the maintenance of a bastard child, to grant a warrant against the putative father for the purpose of enforcing payment under the order, was not suspended by an appeal to the quarter sessions by the putative father against the order, and the confirmation of the order by the sessions subject to a special case. Lord *Campbell*, C. J., in the course of delivering his judgment, said, "There is no universal juridical maxim or rule that an

Suspension of
execution by
appeal.

(*m*) *R. v. JJ. Surrey*, L. R., 5 Q. B. 87; 39 L. J., M. C. 49.

(*n*) Per Lord *Campbell*, C. J., in *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J., M. C. 89, 92; 1

Jur. 538, S. C.; see also *Ex parte Willmott*, 1 B. & S. 27; 30 L. J., M. C. 161; and *Re Blues*, 5 El. & Bl. 291; 1 Jur. 541.

appeal or writ of error is a stay of execution pending the appeal or writ of error. In our Courts of Equity an appeal is no stay of execution without a special order for that purpose, as has been lately authoritatively declared in the case of *Hope v. Hope* (o), by the present Lord Chancellor, for the information of the tribunals of France. According to the common law of England a writ of error, even when allowed and returnable, is no supersedeas of execution in criminal cases, where there has been sentence and imprisonment. If the party convicted was in prison under his sentence when the writ of error was sued, he continued in prison pending the writ of error; and if he was not, he might still be taken and imprisoned pending the writ of error. . . . In *The King v. Brooke* (2 T. R. 196), this Court intimated an opinion that a commitment under the Vagrant Act was lawful pending an appeal given by the statute against the conviction. *Buller, J.*, observes, 'It is said that it is strange that the party should suffer the punishment while the appeal is pending, but we are to consider it like a case of a writ of error, which does not suspend the execution of a judgment which it is brought to reverse.' The common law upon the subject is illustrated by Lord Lyndhurst's Act, 16 & 17 Vict. c. 32, for allowing, on certain conditions, a stay of execution of judgment for misdemeanors after a writ of error (p). From the 27th section of the stat. 11 & 12 Vict. c. 43, it might be argued, that pending an appeal justices are not at liberty to grant a warrant in execution, as they are thereby expressly authorized to grant the warrant after the appeal is determined; but section 35 enacts that the act shall not extend to any complaints, orders or warrants in matters of bastardy made against the putative father of any bastard child, with certain exceptions, which do not include the warrant in question" (q).

(o) 23 L. J., Ch. 682.

(p) See, under 8 & 9 Vict. c. 68,
Dugdale v. The Queen, 24 L. J.,

M. C. 55.

(q) See *post*, "Certiorari," as to the suspension of the issuing of a

By the 27th section of 11 & 12 Vict. c. 43, it is enacted, that if the appeal is decided in favour of the respondent, the justices making the conviction may issue their warrant of distress, &c., as if no appeal had been brought; but this enactment applies only to cases where execution has not issued before the appeal (r).

Where justices who have convicted a husband of an aggravated assault make an order that the wife shall no longer be bound to cohabit with her husband, the appeal from such an order is not to the justices in quarter sessions, but to the Probate, Divorce and Admiralty Division of the High Court of Justice (s).

SECT. 2.—Of Notice, Recognizance, &c.

| | | | |
|---|-----|-------------------------------------|-----|
| 1. <i>When Notice to be given</i> | 287 | 7. <i>Respite</i> | 294 |
| 2. <i>By and to whom</i> | 290 | 8. <i>Notice of Trial</i> | 294 |
| 3. <i>Form</i> | 291 | 9. <i>Fresh Notice</i> | 294 |
| 4. <i>Service</i> | 292 | 10. <i>Abandoning</i> | 295 |
| 5. <i>Dispensing with</i> | 293 | 11. <i>Recognizances</i> | 295 |
| 6. <i>Cross Notices</i> | 293 | 12. <i>Deposit</i> | 295 |

When an appeal is allowed by statute it is usually upon certain conditions, viz., that a notice be given to the magistrate whose act is appealed from, or the prosecutor or both, and that a recognizance (t) be entered into to prosecute the appeal and pay the costs.

Prior to the Summary Jurisdiction Act, 1879, the Notice. procedure on appeal varied with the act giving the appeal. Under the Summary Jurisdiction Act, 1879 (u), the

writ of *certiorari* by appeal and admitting to bail after the issuing of a writ of *certiorari*.

(r) *Ex parte Willmott*, 1 B. & S. 27; 30 L. J., M. C. 161, in which case the warrant of commitment had issued before the recognizance on appeal had been entered into, and the Court held that execution was not suspended by the appeal.

(s) 41 Vict. c. 19, s. 4.

(t) See the form, Appendix. When notice is a condition precedent to the right of appeal, see *R. v. JJ. Lancaster*, 8 El. & Bl. 563; 27 L. J., M. C. 161; *Liverpool United Gas Company v. Overseers of Everton*, L. R., 6 C. P. 414; 40 L. J., M. C. 104; 23 L. T. 813.

(u) 42 & 43 Vict. c. 49, ss. 31, 32.

appellant, who was entitled to appeal under a past act, had the option of appealing in accordance with the conditions and regulations prescribed by the particular statute authorising the appeal, or subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879. This option has been done away with by the Summary Jurisdiction Act, 1884 (*x*), and the procedure under the act of 1879 is compulsory in all cases of appeal against a conviction or order of a Court of summary jurisdiction (*y*).

The appellant, within the time prescribed by the special act which gives the appeal, or if no time is prescribed within seven days after the day on which the decision of the Court was given, must give notice of appeal by serving on the other party and on the clerk of the Court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal (*z*).

If a statute requires that ten *clear* days' notice of the intention to appeal shall be given, the ten days are to be taken exclusively both of the day of serving the notice and the day of holding the sessions (*a*).

The same mode of computation is to be adopted if the notice is to be given a certain number of days *at least* before the sessions (*b*). In other cases, one day is reckoned exclusive and the other inclusive.

(*x*) 47 & 48 Vict. c. 43, s. 6.

(*y*) *Shingler v. Smith*, 17 Q. B. D. 49; 55 L. J., M. C. 147; 54 L. T. 759. An appeal from an order of a court of summary jurisdiction made under 11 Geo. 2, c. 19, ss. 4 and 5, by a person adjudged guilty of fraudulently removing goods to prevent distress must be made in conformity with the procedure under s. 31 of the Summary Jurisdiction Act, 1879. So also in excise cases. *R. v. JJ. Glamorganshire*, 58 L. J., M. C. 93. S. 31 of the Act of 1879 does not affect appeals against orders of removal of the poor, as those orders are exempted by the Summary Jurisdiction Act, 1848. *R. v. JJ. Somersetshire*, 22 Q. B. D. 25; 58

L. J., M. C. 93.

(*z*) 42 & 43 Vict. c. 49, s. 31, subsec. 2. Any person aggrieved by an order of justices under the Lunacy Act, 1890, other than orders adjudicating as to the settlement of a lunatic pauper and providing for his maintenance, may appeal to quarter sessions subject to the conditions and regulations of the Summary Jurisdiction Acts, 53 Vict. c. 5, s. 327. The procedure for appeals from orders relating to lunatic paupers is set out in 53 Vict. c. 5, ss. 301—313.

(*a*) *R. v. JJ. Herefordsh.*, 3 B. & Ald. 581, *ante*, p. 62.

(*b*) *R. v. JJ. Shropsh.*, 8 A. & E.

If the notice is to be given "fourteen days before the first day of the sessions," it should be fourteen days before the first day of the general quarter sessions, and not fourteen days before the first day on which the adjourned sessions are appointed to be held for the division in which the appeal is to be tried (c).

Where the appeal was given to the party convicted "on giving *immediate* notice of such appeal," and he did not give notice of appeal until seven days after the date of the conviction, the Court said, that although the word "immediate" might not be construed so strictly as to require the notice to be given forthwith on conviction, yet that this was not such a prompt compliance with the terms of the statute as to justify the sessions in entertaining the appeal (d).

"*Forthwith*" means without such delay as cannot be satisfactorily accounted for (e).

Where a statute reserved a right of appeal upon giving notice "within six days after the cause of the complaint arose," and a warrant of distress was signed and granted by two justices on the 4th of December, which was not executed until the 12th of December,—it was held sufficient, that the party gave notice of appeal within six days after the *execution* of the warrant, the time when he was actually damnified, and that it was not necessary that

173 ; and see *Mitchell v. Foster*, 12 *Id.* 472 ; *Chambers v. Smith*, 12 M. & W. 2 ; *Zouch v. Empsey*, 4 B. & Ald. 522 ; a fraction of a day cannot be considered, so as to render the service of the notice good. *R. v. JJ. Middlesex*, 3 D. & L. 109 ; 14 L. J., M. C. 139. When for the purposes of justice, or for the purposes of the decision, it becomes necessary to see which of two events took place first, the Court will consider the fractions of a day ; see *Campbell v. Strangeways*, 3 C. P. D. 105 ; 47 L. J., M. C. 6 ; 37 L. T. 672, where it was held that the offence of keeping a dog without a licence on a certain day was not

purged by a licence subsequently taken out on the same day.

(c) *R. v. JJ. Suffolk*, 4 D. & L. 628 ; 16 L. J., M. C. 36, S. C. ; *R. v. JJ. Lancashire*, 34 L. T. 124.

(d) *R. v. JJ. Huntingdonsh.*, 5 D. & R. 588 ; see *Re Blues*, 5 E. & B. 291 ; 1 Jur. N. S. 541 ; *Page v. Pearce*, 8 M. & W. 677 ; *Grace v. Clinch*, 4 Q. B. 606 ; *R. v. Aston*, 1 L. M. & P. 491 ; 19 L. J., M. C. 236 ; *ante*, p. 63.

(e) Per Coleridge, J., *Ex parte Lowe*, 3 D. & L. 737 ; and see *R. v. JJ. Ely*, 5 E. & Bl. 489 ; 1 Jur., N. S. 1019 ; 12 A. & E. 672 ; 3 B. & C. 658 ; *R. v. Aston*, 1 L. M. & P. 491.

notice should have been given within six days after the date of the warrant (*f*). Under similar words, when the last of the six days fell on a Sunday, and notice was given on the Monday, it was held to be too late (*g*); but Sunday is to be excluded in computing the twenty-four hours within which the putative father must give notice of appeal against an order of affiliation under 7 & 8 Vict. c. 101, s. 4 (*h*).

The time under this section must be calculated from the verbal adjudication at petty sessions, and not from the time when the formal order is drawn up and signed (*i*).

By whom to
be given.

The person to whom the appeal is given by the particular statute is, of course, the person to give notice of the appeal. If there is a joint grievance to several appellants, they may join in their notice (*k*); and even when three persons had been jointly summoned for unlawful fishing, and, after a joint hearing, had been convicted in separate sums for each defendant, a joint notice of appeal given by them as against a conviction "of us," &c., naming the three, was held to be sufficient, as it could not mislead the justices, although the defendants entered severally into recognizances by separate instruments, and although three several convictions, one of each defendant, were afterwards returned to the sessions (*k*). If the appeal be given to a public body, such as parish officers, the act of the majority in giving the notice is binding (*l*); and, unless the words of the statute preclude it, the notice may be given by solicitor (*m*). Notice of appeal in the name of the appel-

(*f*) *R. v. JJ. Devon*, 1 M. & S. 411; see *Prosser v. Hyde*, 1 T. R. 414, where the words were "after judgment;" *ante*, p. 64; and *post*, p. 298.

(*g*) *R. v. JJ. Middlesex*, 2 Dowl. N. S. 719, in which it was assumed that the cause of complaint arose when the conviction was made. See *Wynne v. Ronaldson*, 13 W. R. 899. See also *post*, p. 292, as to serving notice of appeal on a Sunday.

(*h*) *R. v. JJ. Middlesex*, 5 D. & L.

580; 17 L. J., M. C. 111, S. C.; see *R. v. JJ. Huntingdonsh.*, Cald. 283.

(*i*) *Ex parte Johnson*, 32 L. J., M. C. 193.

(*k*) *R. v. JJ. Oxfordsh.*, 4 Q. B. 177; *Garrett v. JJ. Middlesex*, 12 Q. B. D. 620.

(*l*) *Withnall v. Gartham*, 6 T. R. 398.

(*m*) See *R. v. JJ. Middlesex*, 20 L. J., M. C. 42.

lant, signed by the clerk to his solicitor by the authority of the appellant, is sufficient (*n*).

As already stated, the Summary Jurisdiction Act, 1879 (*o*), provides that in appeals to general or quarter sessions the appellant is to give notice of appeal “by serving on the other party and on the clerk of the Court of summary jurisdiction notice in writing of his intention to appeal.” It has lately been held (*p*) that the notice of appeal to be served on the clerk of the Court of summary jurisdiction need not be addressed to the justices from whose decision the appeal is brought. *Wright, J.*, in delivering judgment said, “We should, I think, put too narrow a construction on the statutory direction that a notice of appeal is to be served on the clerk to the justices, if we were to hold that it was not satisfied by a notice of appeal addressed to him. I believe that the object of the legislature was to lessen the number of steps in the procedure, and so to prevent expense. It was found difficult for an appellant to serve notices of appeal on the convicting justices, and it was therefore deliberately enacted that it should be sufficient for him to serve a notice on the clerk, leaving it to the clerk to give notice to the convicting justices, whose names he can easily find in the minutes of the proceedings.”

The notice of appeal need not be in any special form (*q*). Form of notice. As the object of a notice is to inform the respondents that some particular conviction is to be appealed against, care should be taken that they cannot be misled on this subject; and therefore the names of the appellants, the intention to appeal, the sessions to which the appeal is to be made, the sessions at which and the justices before whom the conviction took place, as well as the nature of the conviction itself, should be contained in the notice.

(*n*) *R. v. JJ. Kent*, L. R., 8 Q. B. 305; 42 L. J., M. C. 112; 21 W. R. 635.

(*o*) 42 & 43 Vict. c. 49, s. 81,

sub-sec. 2.

(*p*) *R. v. JJ. Essex*, [1892] 1 Q. B. 490.

(*q*) See form in Appendix.

Notices, however, will not be critically construed, : they substantially give the respondents the req information, they will (apart from statutory provisio held sufficient (*r*). Thus where the notice state intention to appeal to the borough sessions (the a properly being to the county sessions), it was held these words might be rejected as surplusage, if they not mislead (*s*), though, if acted upon, then the nc could not be taken as good for the county sessions aft wards (*t*).

All the statutory provisions must be accurately fulfilled, so that where a statute gives an appeal to a person by any particular description the notice should bring the appellant within it: thus, where a statute gives a right of appeal to a *party aggrieved*, on giving notice in writing, the notice should state that the party appealing is *aggrieved* by the conviction (*u*).

Service of
notice.

The Summary Jurisdiction Act, 1879, declares that every notice in writing required, as provided by that act (*x*), to be given by an appellant shall be signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post (*y*). Its arrival on a Sunday does not invalidate the service (*z*).^{*}

(*r*) *R. v. JJ. Denbighsh.*, 9 Dowl. P. C. 509; *R. v. JJ. Oxfordsh.*, 4 Q. B. 177; *R. v. West Houghton*, 5 Q. B. 300.

(*s*) *R. v. JJ. Buckinghamsh.*, 4 El. & Bl. 259; 24 L. J., M. C. 15; *R. v. Recorder of Liverpool*, 15 Q. B. 1070.

(*t*) *R. v. JJ. Salop*, El. & Bl. 257; 24 L. J., M. C. 14.

(*u*) *R. v. JJ. West Riding of Yorksh.*, 7 B. & C. 678; *R. v. Blackburn*, 10 B. & C. 792; *R. v. JJ. Essex*, 5 B. & C. 431; 7 D. & R. 658. A local act gave a right of appeal to any person thinking him-

self aggrieved by any order of the commissioners appointed by it. It was held that a person, who had been present at a meeting, and concurred in a resolution upon which the order appealed against was founded, could not appeal; *Harrop v. Bayley*, 6 El. & Bl. 218; 25 L. J., M. C. 107; and see *Garrett v. JJ. Middlesex*, 12 Q. B. D. 620.

(*x*) *Ante*, p. 288.

(*y*) 42 & 43 Vict. c. 49, s. 31, sub-sec. 7.

(*z*) *R. v. Leominster*, *supra*; *Rawlins v. Overseers of West Derby*, 2

Under a section, directing the convicting magistrate to apprise the party of his right to appeal, it has been held, that the magistrate is bound to inform him, not only of his right to appeal generally, but of the necessary steps to be taken by him in pursuance of that right. Thus, where an appeal was given by statute (17 Geo. 3, c. 56), on giving notice *in writing* of the party's intention so to do, and entering into a recognizance; and, by the same statute, the justices were required to make known to such person, at the time of conviction, his right to appeal; but the justices, having informed a party of his right, said nothing about the notice;—the sessions, it was held, were bound to receive the appeal, although no notice in writing had been given (a). But in another case under this statute, where it appeared from the return to a *mandamus*, that the justices had, in fact, made known to the defendant his right to appeal, whereupon he waived any intention of appealing, by replying to them, that he thought he had better pay the penalty; the Court held, that the justices need not have gone on to inform him of the necessary steps to be taken in order to appeal (b). And if the giving notice be prevented by the act of God, as by the death of the person to whom it was to be given, notice will be dispensed with (c). Dispensing with notice.

Sometimes it may be advisable, where the power exists, to give a cross notice of appeal. Thus where on an information, containing four counts, for offences against the excise laws under 7 & 8 Geo. 4, c. 53, the justices convicted on the fourth and acquitted on the other counts, and the defendant gave notice of appeal from the judgment to the quarter sessions, but the officer prosecuting for the Crown gave no notice of appeal against the judgment of acquittal; it was held that the defendant's notice was Cross notice of appeal.

C. B. 72; and see *Palmer v. Allen*, 6 C. B. 51; 18 L. J., C. P. 266; *R. v. JJ. Middlesex*, 5 D. & L. 580.

(a) *R. v. JJ. Leeds*, 4 T. R. 583.

(b) *R. v. JJ. West Riding of Yorksh.*, 3 M. & S. 493.

(c) *R. v. JJ. Leicestersh.*, 15 Q. B. 88.

limited to the judgment on the fourth count, and that as on the hearing the Court of Quarter Sessions was of opinion that that count was not sustained by the evidence adduced, but the second count was, the judgment must be altogether for the defendant (*d*).

Respite

Notice of trial.

Where, after due notice is given, the appeal is respited to the following sessions, fresh notice of appeal is not necessary (*e*). But after the appeal is respited, if the appellant does not give the usual notice of trial required by the sessions, the sessions will be authorised in dismissing it altogether; for the party is bound to conform to the practice of the sessions (*f*). Where, however, an appeal was respited until the following sessions, in consequence of an equal division of opinion on the bench, it was held that no fresh notice of trial was necessary (*g*); nor is it required where the appeal is adjourned at the instance and for the accommodation of the respondents (*h*). Where full notice of an appeal has been given, and there is no countermand of the notice, the sessions are justified in refusing to respite the appeal on the ground of the absence of a witness, unless the appellant pay the costs of the day (*i*).

Where the respondent was dead at the time the notice of appeal was sent, it was held that the sessions should nevertheless hear the appeal (*k*).

Fresh notice.

If the time for giving notice be not passed, the appellant may abandon his first notice and give another (*l*).

(*d*) *R. v. Gamble*, 16 M. & W. 384. The 82nd section of 7 & 8 Geo. 4, c. 53, enables the prosecutor, as well as the defendant, to appeal. See *R. v. Woodrow*, 15 M. & W. 404, as to the giving and signing the notice of appeal by the excise officer.

(*e*) *R. v. Lambeth*, 3 D. & R. 340; 2 D. & R. Mag. Ca. 26. If a second notice is given differing from the first, it is bad; *R. v. Eyre*, 7 El. & Bl. 609; 26 L. J., M. C. 125. As to entering and respiting appeal, see *Id.* and S. C. pp. 14, 121, and

R. v. JJ. West Riding, El. Bl. & El. 713; 27 L. J., M. C. 269.

(*f*) *R. v. JJ. Salop*, 2 B. & A. 694.

(*g*) *R. v. JJ. Buckinghamsh.*, 6 D. & R. 142; 3 D. & R. Mag. C. 23.

(*h*) *R. v. Lindsey*, 6 M. & S. 379.

(*i*) *R. v. JJ. Monmouthsh.*, 1 B. & Adol. 895.

(*k*) *R. v. JJ. Leicestersh.*, 15 Q. B. 88, *ante*, p. 100.

(*l*) *R. v. JJ. West Riding of Yorksh.*, 3 T. R. 778.

If the appeal be frivolous, though not prosecuted, the Quarter Sessions may award costs (*m*).

Costs if
abandoned
appeal
frivolous.
Recognizances
or deposit

The appellant, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, must enter into a recognizance before a Court of summary jurisdiction, with or without a surety or sureties as that Court may direct, conditioned to appear at the sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal, or the appellant may, if the Court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the Court of summary jurisdiction or otherwise, as that Court deem sufficient (*n*).

Where the appellant is in custody, the Court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the Court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody (*o*).

A Court of summary jurisdiction made an order, and on the same day, gave leave to the person affected by the order, who intended to appeal, to make a deposit and fixed the amount. Four days later, notice of appeal was given. The Court of quarter sessions refused to hear the appeal. On application for a mandamus to compel the sessions to hear the appeal it was held that the intention of s. 31, sub-ss. 2, 3, of the Summary Jurisdiction Act, 1879, was that the Court allowing a deposit should have the notice of appeal before them, and the allowance before the notice of appeal had been given was invalid, and therefore the refusal to hear the appeal was right (*p*).

(*m*) 12 & 13 Vict. c. 45, s. 6.

(*o*) Sub-sec. 4.

(*n*) 42 & 43 Vict. c. 49, s. 31,
sub-sec. 3.

(*p*) *R. v. JJ. Anglesey*, [1892] 2
Q. B. 29; 61 L. J., M. C. 143.

Charles, J., in giving judgment, said, "Reading the two sub-sections together it is clear that the intention was to have the notice of appeal and the grounds of appeal before the Court which was to be asked to allow a deposit, so as to put the Court in possession of facts which would enable them to fix a reasonable amount."

The General Quarter Sessions Procedure Act (12 & 13 Vict. c. 45), s. 8, which empowers the Court before which the appeal is brought, in cases where the recognizance has been entered into within the time by law required, but is in any way invalid, to allow the substitution of a new and sufficient recognizance, and for that purpose to allow such time and make such examination and impose such terms as to payment of costs to the respondent as shall appear just and reasonable. The decision of the sessions upon this point is to be final, and not liable to be reviewed in any Court by *certiorari*, *mandamus* or otherwise (*q*). By this act, after notice of appeal has been given against certain proceedings, a special case may be stated, by consent or by order of a judge, for the opinion of a superior Court, without previously going to the sessions (*r*), and it is expressly enacted that no recognizance for the prosecution and trial of any appeal shall be deemed to be thereby forfeited (*s*).

(*q*) Sect. 9.

(*r*) Sect. 11 : see Appendix.

(*s*) Sect. 16.

SECT. 3.—*Place and Time of Appeal—The Hearing, Costs, &c.*

| | | | |
|---|-----|---|-----|
| 1. <i>As to Place</i> | 297 | 10. <i>Altering Judgment during Sessions</i> | 310 |
| 2. <i>As to Time</i> | 298 | 11. <i>Decisions of Sessions conclusive, though erroneous</i> | 310 |
| 3. <i>Appeal dismissed for Informality conclusive</i> | 299 | 12. <i>Special Case reserved</i> | 314 |
| 4. <i>Second Notice</i> | 301 | 13. <i>Costs</i> | 317 |
| 5. <i>Adjournment</i> | 302 | 14. <i>Enforcing Orders of Sessions</i> | 320 |
| 6. <i>The Hearing</i> | 305 | 15. <i>Effect of confirming Conviction on Liability of Magistrate</i> | 321 |
| 7. <i>Sessions can only notice Conviction returned by Justice</i> | 305 | 16. <i>Interested Justices present during Appeal</i> | 322 |
| 8. <i>Grounds of Appeal</i> | 308 | | |
| 9. <i>Amending on Appeal</i> | 308 | | |

“Where any person is authorized to appeal from the *As to place.* conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, the appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded” (*t*). Where any Act passed before the Summary Jurisdiction Act, 1879, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded (*u*).

(*t*) 42 & 43 Vict. c. 49, s. 31.

(*u*) 42 & 43 Vict. c. 49, s. 32.
See *R. v. JJ. Staffordsh.*, L. R. 7 Q. B. 288; 41 L. J., M. C. 78, and *R. v. JJ. Kent*, L. R., 1 Q. B. 385; 35 L. J., M. C. 201, as to when an

appeal against an order of removal made by justices of a borough is to the borough sessions and not to the county sessions. See also sect. 27 of 30 & 31 Vict. c. 106, which enacts that where a union extends

As to time,

If no limits are fixed by the act for the *time* within which an appeal must be brought, it is nevertheless understood that it must be within a reasonable time (*x*).

“Next sessions.”

The appeal is most frequently limited to the *next* sessions after the conviction, or to the sessions which shall be held next after so many days or months (*y*) from the conviction.

Where it is required that the appeal shall be brought at the *next* sessions after the conviction, it means the next practicable sessions (*z*).

“After judgment.”

Where a statute provides, that a party, finding himself aggrieved by the *judgment*, may appeal to the next quarter sessions, this is construed to mean the sessions next after the conviction, and not the sessions after the execution or levying the penalty (*a*).

A statute required ten days' notice of appeal to be given “within six days after order, judgment or determination made or given.” The justices, on the 23rd of April, after hearing evidence and examining the surveyor of highways, expressed their determination to make an order on him as such surveyor to pay a sum of money to the trustees of a turnpike road (under 4 & 5 Vict. c. 59), and a form of an order, in writing, was then and there signed by them in

into several distinct jurisdictions, every matter, act, charge or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union. In like manner the appeal is to the county sessions against order adjudging settlement of pauper lunatics confined in borough asylum. *R. v. JJ. Warwicksh.*, 28 L. J., M. C. 249.

(*x*) Per Lord Ellenborough, *R. v. JJ. Oxfordsh.*, 1 M. & S. 448; see *R. v. JJ. Gloucestersh.*, 3 M. & S. 127; *R. v. JJ. Herts*, 3 *Id.* 459.

(*y*) That is “calendar” months, unless words be added showing the contrary intention, 52 & 53 Vict. c. 63, s. 3.

(*z*) See *R. v. JJ. Southampton*, 6 M. & S. 394; *R. v. Hendon*, 2 D. & R. 249; 1 D. & R. Mag. Ca. 245; *R. v. JJ. Sussex*, 15 East, 206; *R. v. Thackwell*, 6 D. & R. 61; 3 D. & R. Mag. Ca. 121; 4 B. & C. 62; *R. v. JJ. Lancash.*, 19 L. J., M. C. 199; *R. v. JJ. Surrey*, 3 D. & L. 343; 15 L. J., M. C. 1; *Bowman v. Blyth*, 8 El. & Bl. 7; 27 L. J., M. C. 21; see cases cited in *Liverpool Gas Co. v. Overseers of West Derby*, L. R., 6 C. P. 414; 40 L. J., M. C. 104; *R. v. JJ. Surrey*, 6 Q. B. D. 100; 50 L. J., M. C. 10.

(*a*) *Prosser v. Hyde*, 1 T. R. 414; and see *R. v. JJ. Pembroke-sh.*, 2 East, 213; *R. v. JJ. Staffordsh.*, 3 *Id.* 151; *R. v. JJ. Derbysh.*, 7 Q. B. 193.

blank, the blanks being afterwards filled up by the clerk in conformity with their verbally expressed decision, but no copy of the order was served upon the surveyor for six weeks afterwards. The order was held to have been made on the 23rd of April, and notice given more than six days after the 23rd was too late (b).

In a case where the *cause of complaint* admitted of two constructions, or was compounded of two separate acts, the last act done was held to be the cause of complaint, from the date of which the period limited for the appeal was to be reckoned. Thus, by a local act certain guardians and directors of the poor were authorized to contract debts and grant annuities; and it was provided, that any person aggrieved by anything done in pursuance of the act might appeal to the quarter sessions to be holden "within four calendar months next after the cause of complaint should have arisen." A ratepayer appealed to the sessions against an order of the guardians for the payment of sums due on annuities, and as interest on loans. The order had been made less than four months back, but the debts had not been incurred nor the annuities granted within five months; and it was held, that the cause of complaint was the making the order for the payment of the interest and the annuities, and not the borrowing or granting the annuities (c).

Where the appeal is given to the next sessions, and upon certain conditions, such as giving notice, entering into recognizance, or the like; in such case, if an appeal be lodged at the proper sessions, but dismissed for want of compliance with some of the prescribed forms, the right of appeal is gone, and cannot be renewed at any other sessions, although such other sessions are within the time limited by the act.

Thus, a statute gave an appeal from a conviction by a justice to any quarter sessions to be holden within six

(b) *R. v. JJ. Derbysh.*, 7 Q. B. 35 L. T. 362.
193; *R. v. St. Albans' Sanitary Authority*, 45 L. J., M. C. 105; (c) *R. v. JJ. Salop*, 2 B. & Ad. 145.

months from such conviction, on condition that the appellant should give ten days' notice of his intention to appeal, and enter into a recognizance within four days after such notice. An appeal was lodged at the first sessions after the conviction; the sessions dismissed it, without entering into the merits, for want of proof that the recognizance was entered into within four days of the notice given. At the following sessions, and within the six months of the conviction, a second appeal was lodged, which the Court refused to hear. Upon a motion for a *mandamus* to compel the sessions to receive such second appeal, it was held, that the first judgment was conclusive, and that no second appeal could be brought against the same conviction (*d*); for it was held that, after the appeal was lodged, and adjudged by the justices at sessions to be informal, they were *functi officio*, and could not take cognizance of the second appeal. And *Buller, J.*, said, "The act certainly only gives a right of appealing *once*; and the parties, having had one appeal, are bound by that. If the question had rested solely on the *notice* of appeal for the first sessions which happened, and nothing further had been done, I should not have thought the parties bound by it; for the act gives the power of appealing within a certain time, with these two requisites, viz. that the appellant must give ten days' notice, and within four days after enter into a recognizance. When the party, therefore, found out his mistake, he might have stopped there; but he persisted in going on with his appeal, and brought it before the Court, and took their judgment upon it. The appellate jurisdiction was therefore fully exercised; and, though it was originally in the option of the parties, whether they would appeal to the first or second sessions which took place within the six months, yet, having made their election to appeal to the first, they must abide by

(*d*) *R. v. JJ. West Riding of Yorksh.*, 3 T. R. 776, recognized *R. v. JJ. Middlesex*, 9 Dowl. P. C.

163. The conviction was on a local act, 17 Geo. 3, c. 106.

the judgment there given."—Agreeably, therefore, to what is here laid down, the party who has given notice of appeal, but neglected to enter into the recognizance, may set himself right by giving a fresh notice of appeal, and entering into a recognizance to prosecute *that* appeal, provided it be to a sessions within the time limited. In accordance with the principle of the above case, it was decided under the old law (which allowed an appeal against the actual removal of a pauper, if there had not been a previous appeal against the order), on the one hand, that if the previous appeal was dismissed without hearing, because there were no grounds of appeal, the appellant might still appeal against the removal, as the previous proceedings were altogether abortive (*e*); but on the other, if the previous dismissal was on the ground that the original order was not produced, but only a copy, he might not, as this was going into the case and an adjudication on the evidence (*f*).

Second notice,
where proper.

In appeals limited to the *next* session, where the appellant relies on an objection, independent of the merits, and procures an order of the sessions quashing the conviction on that ground, which order is afterwards set aside by the Queen's Bench Division, and consequently the conviction set up again, the appellant cannot afterwards go to the sessions again to hear the appeal discussed upon the merits, by entering continuances from the first appeal (*g*).

Appellant
relying on
objection
of form
concluded.

Where, however, the sessions quash a conviction for matter of form only, subject to the opinion of the Queen's Bench Division upon the validity of the objection, and it appears to the Court, when the conviction is returned by *certiorari*, that there is no defect of form, they will send the case back to be heard on the merits; for in such case the conviction must be only considered as quashed

(*e*) *R. v. Macclesfield*, 13 Q. B. 881. L. 512; 18 L. J., M. C. 79.

(*f*) *R. v. JJ. Sussex*, 9 Dowl. P. C. 128; *R. v. Peterborough*, 4 D. & (g) *R. v. Allen*, 15 East, 346. See 3 T. R. 519; 4 T. R. 273.

conditionally by the sessions, until the Queen's Bench Division has determined whether the form of it is correct (*h*).

Adjournment. The sessions at which an appeal is properly lodged, and all due requisites complied with, being regularly possessed of the case, may *adjourn* it to a subsequent sessions. The Summary Jurisdiction Act, 1879, provides that the sessions may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of sessions thereon, to a court of summary jurisdiction acting for the same county, borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of sessions may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction (*i*).

If an appellant be surprised at the sessions by the production of a conviction different from the copy which had been delivered to him, he may apply for time, and the appeal should be adjourned (*j*).

The right of adjournment may be taken away by the express terms of a statute. Thus it has been held on the language of 9 Geo. 4, c. 61, that there was no power to adjourn to the next sessions an appeal against refusal of a licence (*k*), but that it did not prevent the adjournment of the same sessions to a future day (*l*), and on the language of 26 Geo. 2, c. 74, that there was no power to adjourn the consideration of the table of fees to be taken by the

(*h*) *R. v. Ridgway*, 5 B. & Ald. 527; 1 D. & R. 132.

(*i*) 42 & 43 Vict. c. 49, s. 31, sub-sec. 5.

(*j*) *R. v. Allen*, 15 East, 346; see 3 T. R. 519; 4 T. R. 273.

(*k*) *R. v. Belton*, 11 Q. B. 379; 17 L. J., M. C. 70.

(*l*) *Ravensley v. Hutchinson*, L. R., 6 Q. B. 305; 40 L. J., M. C. 97.

clerks of justices (*m*). And where the legislature directs an act to be done at a particular sessions, and at that sessions alone, no subsequent sessions has power to do it, and there is no authority in such case to adjourn its consideration or performance (*m*).

The sessions are to judge of the proper occasions for adjourning the hearing. But though the power of adjournment is inherent in the sessions, for their own convenience in hearing the appeal, or for any other good cause, as the absence of a witness, &c., that power can only be exercised on appeals regularly brought before them, that is to say, where all the conditions as to notice, &c., which are the acts of the party appealing, have been observed (*n*).

In early times it was very common for the justices to adjourn a case to take the opinion of the judges of assize thereon, and at a subsequent sessions to act upon that opinion (*o*). The history of this practice has been lucidly stated by *Field, J.*, in the case of *R. v. Chantrell* (*p*). "The form of the commission of the peace, which gives the justices jurisdiction, appears never to have been altered from the first. It is found in Latin, as it originally issued, in *Dalton's Justice of the Peace*, p. 17, and in English, as it is now issued, in *Dickenson's Quarter Sessions*, p. 59. And it contains the following proviso: "Provided always that if a case of difficulty upon the determination of any of the premises, before you or any two or more of you, shall happen to arise, then let judgment in nowise be given thereupon before you or any two or more of you, unless in the presence of one of our justices of either bench, or of one of our justices appointed to hold the assizes in the aforesaid county." This not merely empowers but

(*m*) *Bowman v. Blyth*, 7 E. & B. 26, 47; 26 L. J., M. C. 57.

(*n*) *R. v. JJ. Oxfordsh.*, 1 M. & S. 448; *R. v. JJ. Westmoreland*, L. R., 3 Q. B. 457; 37 L. J., M. C. 115; 18 L. T. 326.

(*o*) See *R. v. Cambridge Union*, 30 L. J., M. C. 140; and *Leeming and Cross's Quarter Sess.* (2nd ed.) 328.

(*p*) L. R., 10 Q. B. 587; 44 L. J., M. C. 94.

requires the justices in any case of difficulty to obtain the opinion of a judge; and by implication requires the judge to give his opinion. We can find no traces of the manner in which the presence of a justice of either bench at the sessions was ever obtained. The justices of the peace are required to attend at the assizes; which in early times was not, as it now is, a mere form; and there could be no practical difficulty in obtaining the presence of a justice of assize so long as the pressure of business was not so great as to prevent his having time to attend to the sessions business. A practice, however, seems to have arisen by which, instead of adjourning the sessions to the assizes, and then deciding the case which the justices thought of difficulty in the presence of a judge of assize, the sessions stated the case on which they found difficulty in writing, and decided it according to the opinion of the judge of assize given upon that case; and we find traces of this practice being resorted to as late as the year 1734. But it was probably attended by inconveniences which led finally to its disuse in favour of the practice with which we are now familiar—of deciding the appeal conditionally and subject to the opinion of this Court upon any question of law stated by the justices upon a case reserved by them. We cannot discover the time when this modern practice became established. It appears from an *Anonymous case* (q) that as early as Hilary Term 11 Wm. 3, an attempt was made to reserve a case for the opinion of the Court of King's Bench, but that Court refused to entertain it, and remitted it to the judge of assize. This was in the time of Lord Holt. It appears from the discussion in *R. v. Tedford* (r), that in the time of Lord Hardwicke the modern practice existed, but had not completely superseded the old practice. In Nolan's Poor Laws (the first edition of which was published in 1807) the practice of stating a case for the King's Bench is mentioned as having

(q) 2 Salk. 486.

(r) Barrow's Settlement Cases, 57.

completely superseded the old practice of obtaining the opinion of a judge of assize."

On the hearing of the appeal the sessions can only take notice of the record of conviction returned by the magistrate. This was so held, though the conviction so filed differed, in the name of the informer, from the copy delivered to the appellant at the time of the conviction by the justice's clerk (s). The hearing. Sessions can only notice conviction returned by justice.

It was said by the Court of Queen's Bench that if the justice had done wrong in returning an improper conviction to the sessions, he would be punishable; but it clearly appeared, that the copy delivered to the appellant was drawn up in the form he received it by mere mistake; for it was drawn up on the back of the information of the very person who was the true informer. The Court moreover refused to send the case down again to be heard upon the merits; for the defendant, having chosen to rely upon the formal objection, was concluded by that election.

It seems to be an admitted rule, that, in every case of appeal to the sessions (t), both parties are at liberty to examine all competent witnesses on their behalf, without regard to whether they have been examined before or not (u). Fresh evidence may be given on hearing of appeal.

If the conviction or order has not been returned to the

(s) *R. v. Allen*, 15 Last, 333, 346, ante, p. 234 et seq.

(t) *R. v. Pilgrim*, L. R., 6 Q. B. 89; 40 L. J., M. C. 3. On the hearing of appeals at sessions, it sometimes becomes a question whether the Court can proceed unless the appellant is personally present. There seems to be no general rule upon this subject, the question depending in a great measure upon the practice of each sessions respectively. In the case of an appeal against a conviction on the Stage Coach Act, 50 Geo. 3, c. 48, it was resolved, after argument, by the quarter sessions for the county of Essex, that the appellant must be present at the hearing of

his appeal; *R. v. Cracklin*, Mic. 1882, Ed. The like practice seems to prevail at the *Middlesex* sessions, and the same reason, which requires that the appellant should be present, applies equally to the informer. If the appellant does not appear according to his notice and recognizance, the Court cannot hear the case (*R. v. Stoke Bliss*, 6 Q. B. 158; *R. v. JJ. West Riding Yorks.*, 5 *Id.* 1); but, under such circumstances, costs may be awarded to the respondent, 12 & 13 Vict. c. 45, s. 6.

(u) See *R. v. Gamble*, 16 M. & W. 384; *R. v. Pilgrim*, L. R., 6 Q. B. 89; 40 L. J., M. C. 3; *R. v. Abergavenny Union*, 50 L. J., M. C. 1.

sessions, a *subpœna duces tecum* should be served upon the clerk to the justices by whom it was made ; and, if the order or conviction has been served upon the respondent, it will be advisable also to give him a notice to produce it. The same course must be adopted with regard to other documents which the parties require to give in evidence at the hearing (*x*). Where a witness served with a *subpœna duces tecum* does not attend or attends and refuses to produce the document (not on the ground of privilege), secondary evidence cannot be given of its contents, the only remedy being to punish the witness for a contempt (*y*).

Sessions
practice.

Upon the hearing of appeals, the first step after the appeal is called on is, that the appellant should prove his notice, unless it be admitted. Where an appeal is called on and then adjourned to the next sessions on the application of the respondent's counsel, he may, nevertheless, require proof of due notice of appeal (*z*) ; but where there had been a due notice, of which (though not proved or admitted) a copy was handed by the respondent's counsel to the clerk of the peace in order to make out the order of respite which had been obtained, it was held that the respondent had so acted on the notice as to prevent him from calling for proof of it next sessions (*a*). The Court of Quarter Sessions would, however, be wrong to call for a notice of appeal to the sessions to which the case was adjourned, though they might call for the original one (*b*).

As soon as the notice of appeal has been proved or admitted, the clerk of the peace proceeds to read the conviction which has been returned by the convicting justices. If any objections arise on the face of the conviction, the appellant usually begins ; and, if he does so, he is bound

(*x*) See *Barker v. Davis*, 34 L. J., M. C. 140.

(*y*) *R. v. Llanfæthly*, 2 El. & Bl. 940 ; see *R. v. Saffron Hill*, 1 Id. 93, and *Phelps v. Prew*, 3 El. & Bl. 430.

(*z*) *R. v. JJ. Middlesex*, 2 Dowl.

N. S. 719 ; *R. v. JJ. West Riding of Yorksh.*, 5 B. & Ad. 667.

(*a*) *R. v. JJ. Hertfordsh.*, 4 B. & Ad. 561 ; and remarks on it in *R. v. JJ. Middlesex*, *supra*.

(*b*) *R. v. JJ. West Riding of Yorksh.*, *supra*.

to state all his objections thereto at once, in order that they may be met on the other side ; for it would be endless if each objection were to be discussed and decided *seriatim*. Objections which have been waived by appearance or otherwise at petty sessions cannot be taken at the quarter sessions (c) Should the objections to the form of the conviction be overruled, or none be taken, *in limine*, the respondent opens his case upon the merits, and calls his witnesses ; and he is not confined, as we have just seen, to such witnesses as were examined below (d). If the Court thinks the case thus opened and proved requires an answer, the appellant then opens his case, and calls his witnesses, with the like liberty of calling fresh evidence in addition to what he may have relied upon on the hearing of the information ; and, as soon as his own case is closed, the respondent has a general reply upon the whole case.

Formal objections to be stated at once.

Fresh evidence.

The Court of Quarter Sessions, however, may regulate its own practice with regard to the hearing of appeals, and if such practice be clearly shown to have been adopted, the Court will not interfere with their discretion in this respect unless it be manifestly unjust (e).

Court may regulate its own practice.

(c) *R. v. JJ. Wilts*, 12 A. & E. 739 ; *R. v. Berry*, 28 L. J., M. C. 86, 90.

(d) If the respondent does not appear in support of the conviction, it may be quashed at once with costs after service of notice of appeal has been proved ; *R. v. Purdey*, 34 L. J., M. C. 4 ; 5 N. R. 76.

(e) *R. v. JJ. Derbysh.*, 16 Jur. 1071 ; 22 L. J., M. C. 31, *S. C.* ; *R. v. JJ. Montgomerysh.*, 3 D. & L. 119 ; 14 L. J., M. C. 142 ; *R. v. JJ. Warwicksh.*, 6 Q. B. 750 ; 14 L. J., M. C. 39 ; *R. v. JJ. Surrey*, 18 *Id.* 175. The following is the rule of practice adopted on the trial of appeals at the quarter sessions for Staffordshire :—In all cases the party, whether respondent or appellant, who is called upon to begin

is at liberty to open his case by stating the general nature or outline of it, and then to give his evidence, —at the close of which, the opposite party is, in like manner, at liberty to state the general nature or outline of the case about to be proved by him ; at the close of the evidence on both sides, the counsel on each side address the Court once on the whole case, the party whose evidence was first given having the last speech. If evidence is only given on *one* side, the counsel on that side addresses the court at the close of it, and then the counsel on the other side. The respondent party begins in all cases except where the affirmative of all the issues raised lies upon the appellant, in which case the appellant

In a case where, upon appeal to quarter sessions, it appeared that the preliminaries introductory to an appeal required by the particular statute had been observed, but that the appeal had not been entered, and the grounds of appeal deposited with the clerk of the peace three clear days before the first day of sessions, pursuant to a rule or standing order of sessions; and that the Court of Quarter Sessions had thereupon refused to allow the appeal to be entered: the Court of Queen's Bench held that the rule of sessions amounted to imposing an additional condition to the appeal which the statute had not imposed, and was more than a mere rule of practice which it was competent to the sessions to make (*f*).

Judicial notice
of petty
sessional
divisions.

Grounds of
appeal.

Amendment
of grounds of
appeal.

The Court of Quarter Sessions, on appeal, will take judicial notice of the petty sessional divisions of a county (*g*). The General and Quarter Sessions Procedure Act, 12 & 13 Vict. c. 45, s. 3 (*h*), enacts that upon the hearing of any appeal, no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the receipt of legal evidence offered in support of any ground of appeal shall prevail, unless the Court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial; and if the Court is of opinion that any objection to any ground of appeal, or the reception of evidence in support thereof, ought to prevail, it may amend such ground of appeal on such terms, as to payment of costs and postponing the trial, as shall appear just and reasonable. Provision is also made for the payment of costs in the event of the grounds of appeal being frivolous, or a frivolous appeal

begins. In an appeal against the refusal of justices to grant a licence to a victualler, the appellant begins.

(*f*) *R. v. Pawlett*, L. R., 8 Q. B.

491; 42 L. J., M. C. 157.

(*g*) *R. v. Whittles*, 13 Q. B. 248.

(*h*) This act is set forth at length in the Appendix.

being brought and abandoned (*i*). On an appeal against a poor-rate, it has been held, that the appellant has a right to abandon part of the grounds urged before the assessment committee, and to proceed on others, confining his appeal to the grounds in respect of which he had failed to obtain relief (*j*).

In some cases, fresh grounds of appeal may be delivered after an adjournment, even although the adjournment may have been at the instance of the appellant (*k*).

The 7th section, as we have seen (*l*), enacts, that if upon the trial of any appeal against any order or judgment given by any justice, or upon the return to any *certiorari*, any objection shall be made on account of *any omission or mistake in the drawing up of such order or judgment*, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it shall think fit, to amend such order and judgment. The decision of sessions is to be final as to the sufficiency of the statement of grounds of appeal, and the amending or refusing to amend orders or judgments, or the statement of grounds of appeal, is not to be reviewed in any Court by *certiorari*, *mandamus*, or otherwise (*m*).

Amendment
of orders or
judgment of
justices on
appeal.

(*i*) Sect. 4, *post*, p. 319.

(*j*) *R. v. JJ. Kent*, L. R. 6 Q. B. 132; 40 L. J., M. C. 76.

(*k*) *R. v. Kendal*, 1 El. & El. 492; 28 L. J., M. C. 110; see also *R. v. JJ. Derbysh.*, 6 A. & E. 912, n. (*b*); *R. v. Arlecdon*, 11 A. & E. 87.

(*l*) *Ante*, p. 237.

(*m*) Sect. 9, *R. v. Llangenny*, 4 B. & S. 311; 32 L. J., M. C. 265; *R. v. Ruyton*, 1 B. & S. 534; 30 L. J., M. C. 229. Similar provisions have been enacted with regard to orders of removal (11 & 12 Vict. c. 31, s. 4); it has been held that an

entirely new ground of removal may be added, *R. v. Llangenny*, *supra*; and the words "Justices for the Borough" may be altered into "Justices in and for the Borough," *R. v. Hellingley*, 1 El. & El. 749; 28 L. J., M. C. 167. An order of affiliation omitted to state that the father's residence was within the petty sessional division, but the summons alleged this fact, and on a *certiorari* to quash the order, the Court allowed it to be amended in this respect; *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116. A certificate ordering

The Queen's Bench Division has held that where the adjudication is wrong in point of substance, the order cannot be amended under the section, because to make such an amendment would be to amend the judgment itself, which would be clearly beyond the scope of their authority (*n*). Although the question has not yet been decided, the better opinion seems to be that a conviction is included in the above words "order or judgment" (*o*).

Altering
judgment
during
sessions.

The justices at sessions may, it seems, alter their judgment during the continuance of the sessions (*p*).

Decision of
sessions con-
clusive,
though
erroneous,
unless a case
reserved.

If the sessions decide upon an appeal, though erroneously, the Queen's Bench Division has no jurisdiction to review their judgment, except on a case sent up for its consideration; and therefore, where the sessions, having heard the witnesses for the appellant, had refused to hear those for the respondent, on the ground that their testimony had been prefaced by observations on the part of the advocate, and that he had rested his case on his argument as to the insufficiency of the case proved on the other side, the Court refused to grant a *mandamus* to rehear the appeal (*q*). On that occasion, *Bailey, J.*, said

the diversion of a highway, and the stopping up of several others, may be quashed as to the diversion, and confirmed as to the stopping up; *R. v. Midgley*, 33 L. J., M. C. 188; *R. v. Harvey*, 31 L. T. 505.

(*n*) *R. v. Tomlinson*, L. R., 8 Q. B. 12; 42 L. J., M. C. 1; *R. v. Padbury*, 5 Q. B. D. 126; 49 L. J., M. C. 55.

(*o*) See Mr. *Pool's* edition of the act, p. 25, n. He cites 5 Geo. 2, c. 19, which mentions only "judgments or orders," but which has been held to include convictions, and is of opinion that the above section will include convictions as well as orders, or, at any rate, so much of the conviction as can fairly come within the word "judgment,"—which, as we have seen, *ante*, p. 200, consists of the adjudication and the award of punishment. Convictions are expressly

excluded from the above act in two instances,—first, as regards notices of appeal (s. 2), and secondly, as regards references to arbitration (s. 12).

(*p*) *R. v. JJ. Leicestersh.*, 1 M. & S. 442; *R. v. JJ. Yorksh.*, 2 Q. B. 705. By 21 & 22 Vict. c. 73, s. 12, sentences of Courts of Quarter Sessions are to take effect from the time of the same being pronounced unless the Court otherwise directs.

(*q*) *R. v. JJ. Carnarvon*, 4 B. & Ald. 86. In *R. v. Hartington, Middle Quarter*, 4 El. & Bl. 780; 24 L. J., M. C. 98, it was decided that an order of removal unappealed against or confirmed on appeal was conclusive, not only as to the parts directly decided, but as to those facts also that were mentioned in the order, and were necessary steps to the decision of the settlement. The

"There is no instance, I believe, which can be found, where this Court have interfered, by *mandamus*, to direct the justices to rehear an appeal, which they have once already heard. In this case, they entered into the consideration of this appeal, and, after having heard it, they have decided that the respondents ought not to be allowed to call witnesses in reply. It is possible that, in that decision, they may have been wrong; but it seems to me, that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this Court a court of appeal from the quarter sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment, although no case has been sent to us for that purpose. It is the duty of the sessions to hear and decide; and, if they entertain any doubts, to submit them to this Court; but where they do not desire our interference, we have no jurisdiction." *Holroyd, J.*—"If it had appeared in this case, that the sessions had heard one side, and had altogether refused to hear the other, I should have thought it the same as if the case had not been heard at all, and I should have been of opinion that this *mandamus* ought to issue; but, in this case, it appears to me that this was merely a question as to the practice of the sessions, who have determined that the evidence tendered ought not to have been introduced with observations on the part of the advocate. I think, therefore, that this Court has no jurisdiction to interfere in such a case" (r).

The decision of the Court of Quarter Sessions upon the

confirmation of an order by sessions, subject to a case, leaves the order exactly as it was before the confirmation; *R. v. JJ. Pembroke*, 2 B. & Ald. 391; *Kendall v. Wilkinson*, 4 El. & Bl. 680; 24 L. J., M. C. 89, S. C.

(r) See 1 Chit. Rep. 164; *R. v. Farrington*, 4 D. & R. 735; 2 D. & R. Mag. C. 365, S. C.; *R. v. JJ. Monmouth*, 7 D. & R. 334; 4 B. & C. 844, S. C.

form of conviction is not a decision upon a preliminary matter, but a hearing and adjudication upon the merits, which cannot be renewed upon a *mandamus* (s). The Queen's Bench Division, in the exercise of its discretion as to the issuing of a writ of *mandamus*, requires that the application should be made by one who has a real interest in requiring the duties to be performed (t).

Where the Court of Quarter Sessions have refused to hear an appeal on the ground of the insufficiency of the notices, and a *mandamus* is applied for to compel them to hear, the Queen's Bench Division will, upon the argument against the rule, determine the question of the sufficiency or insufficiency of the notices (u).

Upon the hearing of an appeal to quarter sessions against an order of affiliation, it appeared that the respondent and her witnesses were not present, having mistaken the day of hearing, and her counsel applied for an adjournment till the following morning, offering to pay the costs of the day. The appellant having declined to accede to this proposal, the sessions directed the case to proceed, and quashed the order, no evidence having been adduced on the part of the respondent. It was held that the order of quarter sessions was not a decision upon the merits, and that fresh proceedings in respect of the same matter might be taken before justices (x).

Where the sessions on an appeal decide upon a point preliminary to the whole case, or to the reception of a particular piece of evidence, that they will not hear the case further, their decision is conclusive, if the point involve matter of fact only; it is otherwise if it raise a question which the Court can perceive to be one of law,

(s) *R. v. JJ. Middlesex*, L. R., 2 Q. B. D. 516; 46 L. J., M. C. 225; *R. v. Colam*, 26 L. T. 661; 20 W. R. 331.

(t) *R. v. Mayor of Peterborough*, 44 L. J., Q. B. 85. As to a refusal to allow costs, amounting to

a declining of jurisdiction, see *R. v. JJ. Montgomerysh.*, 19 L. T. 397.

(u) *Ex parte Curtis*.

(x) *R. v. May*, 5 Q. B. D. 382; 49 L. J., M. C. 67.

or a mixed question of fact and law, as whether sufficient search had been made for an original document to let in secondary evidence of its contents (*y*). The question, whether the statement of the grounds of appeal is sufficiently specific is of the former kind, and therefore for the sessions to determine (*z*); and it is now expressly enacted by sect. 9 of 12 & 13 Vict. c. 45, that the decision of the Court of General or Quarter Sessions, upon the hearing of any appeal as to the sufficiency of the statement of any ground of appeal, and as to the amending or refusing to amend any order or judgment of justices appealed against, or the statement of any ground of appeal, and as to the substitution of any new recognizance, shall be final, and shall not be liable to be reviewed in any Court by means of a writ of *certiorari* or *mandamus*, or otherwise. Where the sessions on an appeal quash an order of affiliation on the ground of the insufficiency of the corroborative evidence, the order of the sessions is a decision on the merits, and is final, and fresh proceedings cannot be taken before justices (*a*).

Whenever a decision is not confirmed by the Court of Quarter Sessions, the clerk of the peace shall send to the clerk of the Court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the Court of Quarter Sessions, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of

(*y*) *R. v. JJ. Hinckley*, 3 B. & S. 885; 32 L. J., M. C. 158. The question in such cases, is "whether there was reasonable evidence to satisfy the sessions that the document was lost;" per *Blackburn*, J., *Id.* p. 160.

(*z*) *R. v. JJ. Kesteven*, 3 Q. B. 810, overruling *R. v. JJ. Carnarvonsh.*, 2 Q. B. 325; and *R. v. JJ. West Riding*, *Id.* 331. See also *R.*

v. Percy, 17 Q. B. 902; 16 Jur. 193; 21 L. J., M. C. 129, *S. C.*; *R. v. JJ. Cambridgesh.*, 1 L. M. & P. 4; 19 L. J., M. C. 130 (Bail Court); *Re Pratt*, 7 A. & E. 27; *R. v. Eyre*, 7 El. & Bl. 619; 26 L. J., M. C. 14; and *ante*, p. 307.

(*a*) *R. v. Glynn*, L. R., 7 Q. B. 16; 41 L. J., M. C. 58; *R. v. JJ. of Essex*, 49 L. J., M. C. 67; 5 Q. B. D. 382.

the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order (b).

Stating a
special case.

Upon an application to enter and respite an appeal, the Court of Quarter Sessions has no power to state a special case. Thus, the Queen's Bench Division has refused to take notice of a case stated on a motion to enter and respite an appeal, when the sessions made the order for the entry, subject to a case to raise a question whether a preliminary notice to another tribunal was necessary. In that case, *Blackburn, J.*, in delivering judgment, said—"This Court has not in general any jurisdiction to review the decision of the Court of Quarter Sessions on any matter in which the Court had jurisdiction. But there is an exception from that general rule in cases where the Court of Quarter Sessions, on appeal, makes an order, either confirming or reversing the decision appealed against, subject to the opinion of this Court on some point of law reserved on a case stated by the sessions. This Court will then, on a *certiorari* bringing up the order of sessions, take cognizance of the facts stated in the case, and quash or confirm the order of sessions, according to their view, on the points of law submitted to them by the sessions. But such cases have never been heard except on a *certiorari* to bring up an order of sessions, which, if unreserved, would finally decide the appeal. There is strong authority for saying that a point not finally disposing of the appeal, ought not in any form, to be brought before the Court on a case" (c).

Case from
quarter
sessions
without
certiorari.

A writ of *certiorari* or other writ is not now required for the removal of any conviction, order, or other determination in relation to which a special case is stated by a Court of general or quarter sessions for obtaining the judgment or determination of a superior Court (d).

(b) 42 & 43 Vict. c. 49, s. 31, L. R. 9 Q. B. 153; 43 L. J., M. C. subs. 6. 57.
(c) *R. v. I. N. W. Rail. Co.*, (d) 42 & 43 Vict. c. 49, s. 40.

By the 11th section of 12 & 13 Vict. c. 45, it is enacted that at any time after notice given of appeal to any Court of General or Quarter Sessions against "any judgment, order, rate or other matter" (*e*), for which the remedy is by such appeal, it shall be lawful for the parties, by consent and by order of any judge of one of the superior Courts of Common Law, to state the facts of the case in the form of a special case for the opinion of such superior Court (*f*), and to agree that a judgment in conformity with its decision, and for such costs as such Court shall adjudge (*g*), may be entered on motion by either party at the sessions next or next but one after the decision shall have been given; and the judgment is to have the same effect as if it had been given by Court of General or Quarter Sessions upon an appeal duly entered and continued. The recognizances entered into for the prosecution and trial of the appeal are not to be deemed forfeited by the agreement for the special case (*i*).

Power to state a special case without going to the sessions previously.

There is an appeal to the Court of Appeal against an order of the Queen's Bench Division in a case stated under 12 & 13 Vict. c. 45 (*k*); and a case so stated is not an appeal from an inferior Court within s. 45 so as to require leave to appeal (*l*).

(*e*) See *ante*, p. 310, n. (*o*). This section contains the additional words "or other matter," which means other matter *ejusdem generis* as the matters preceding it. See *R. v. James*, 1 East, 303, n.; *Sandiman, v. Breach*, 7 B. & C. 100; *Kitchen v. Shaw*, 6 A. & E. 729; *Ex parte Strong*, 3 Com. L. Rep. 76 (Bail Court); *Morant v. Taylor*, 1 Ex. D. 188.

(*f*) A case from sessions comes before the Queen's Bench Division on a rule to quash the order of sessions, and the counsel supporting the order of sessions, therefore, begins by showing cause against the rule to quash it; *R. v. Whitby Union*, L. R., 5 Q. B. 325.

(*g*) The practice in proceedings on the Crown side of the Queen's Bench Division is unaltered by the Judicature Act, 1890, and there is, therefore, no power to give costs to a successful appellant in a case stated by quarter sessions. *London County Council v. Overseers of West Ham* [1892], 2 Q. B. 173.

(*i*) Sect. 16.

(*k*) *Mayor of Peterboro' v. Stamford Union*, 12 Q. B. D. 1; 53 L. J., M. C. 33; *Overseers of Walsall v. L. N. W. Rail. Co.*, 4 App. Cas. 30; 48 L. J., M. C. 65.

(*l*) *Holborn Guardians v. Chertsey Guardians*, 15 Q. B. D. 76.

No quarter sessions case to be filed after six months.

No special case stated by a Court of General or Quarter Sessions for obtaining the judgment or determination of the High Court upon any order or other determination of a Court of General or Quarter Sessions shall be filed at the crown office department after the expiration of six calendar months from the making of such order or determination, except by leave of the Court on special circumstances being shown, either before or after the expiration of such six months. (Rule 34 of Crown Office Rules, 1886.)

Recognizance for quarter sessions case.

No special case stated upon any order, or other determination of a Court of General or Quarter Sessions shall be filed at the crown office department, unless the party proceeding upon such special case shall enter into a recognizance as provided by rule 36 (*post*, p. 530), and in default thereof the justices may proceed as in that rule provided. (Rule 38 of Crown Office Rules, 1886.)

Recognizance for costs.

In all civil causes or matters, which shall have been removed by *certiorari*, or in respect of which a special case shall have been stated, the recognizance shall be conditioned as regards costs to pay such costs, if any, as the Court shall order. (Rule 39 of Crown Office Rules, 1886.)

Sessions not bound to give reasons or make special entries.

Practice of sessions conclusive unless manifestly unjust.

The Queen's Bench Division has no authority to compel the sessions, by *mandamus*, to give their reasons for their judgment, or make any special entries on their records (*m*). Neither, as we have seen, will the Court interfere with the practice of the sessions, unless it appears to be manifestly wrong or unjust (*n*).

In *R. v. Justices of Cambridgeshire* (*o*), where the defendant had been convicted of forcibly passing a turnpike-gate

(*m*) *R. v. JJ. Devon*, 1 Chit. Rep. 34, 164; and *R. v. JJ. Worcestersh.*, *Id.* 649; see *Ex parte Morgan*, 2 Chit. 250; *R. v. Flockwold*, *Id.* 251; *R. v. JJ. Wilts*, *Id.* 257.

(*n*) *R. v. JJ. Essex*, 2 Chit. 385. See *R. v. JJ. Bucks*, 6 D. & R. 142; *ante*, p. 311.

(*o*) 1 D. & R. 325; 1 D. & R. Mag. Ca. 86.

without paying tolls, the sessions, on appeal, rejected evidence to show that the gate had been unlawfully erected; and the Court of Queen's Bench refused a *mandamus* to compel the sessions to receive such evidence, the admissibility of it being exclusively a question for the justices. The Court also refused to issue a *mandamus* to the sessions to hear an original complaint touching the conduct of the trustees in the erection of the gate, after a lapse of twenty-six years from the time when it was erected, leaving the party to proceed by indictment for the nuisance, or by an action of trespass, if his passage was obstructed (*p*).

And although, under circumstances, the Court of Queen's Bench may grant a *mandamus* to the sessions to state a case, yet it will not, if it be clear that the proceedings can lead to no result; as where the sessions insisted upon the insertion of a fact, which would be fatal to the party requiring the case (*q*). The sessions will not be compelled to *grant* a case, that being a matter purely for their discretion (*r*).

The Court of Quarter Sessions may make such order as to costs to be paid by either party as the Court may think just (*s*).

Upon any appeal, the Court may order the party (*t*) Costs on against whom the same shall be decided to pay to ^{appeal}.

(*p*) As to commanding an act to be done *nunc pro tunc*, see *R. v. Mayor, &c., Rochester*, 7 E. & B. 910; 27 L. J., Q. B. 45; *R. v. North Bierley*, El. Bl. & El. 519; 27 L. J., M. C. 275, 277.

(*q*) *R. v. JJ. Pembroke*, 2 B. & Ad. 391.

(*r*) *Ex parte Inhabitants of Jarvin*, 9 Dowl. 120.

(*s*) 42 & 43 Vict. c. 49, s. 31.

(*t*) This means the informant or defendant, although the justices may be the formal parties to the appeal (*R. v. Smith*, 29 L. J., M. C. 216; *R. v. JJ. Hants*, 1 B.

& Ad. 659); and although the informant may not appear in support of the conviction, *R. v. Purdey*, 34 L. J., M. C. 4. Where an appellant gave notice of appeal to the prosecutor and to the convicting justices, and the justices as well as the prosecutor were named respondents in the appeal, but the justices did not appear, it was held by the Court of Queen's Bench that the sessions had no power to award costs against the convicting justices; *R. v. Goodall*, L. R., 9 Q. B. 556; 43 L. J., M. C. 119; *R. v. Davidson*, 24 L. T. 22.

the other party (*u*) such costs as appear just and reasonable (*x*). They are to be recovered in the manner pointed out by s. 27 of 11 & 12 Vict. c. 43 (*y*), whereby, if the statute give costs and the sessions order them, the order must direct them to be paid to the clerk of the peace (*z*), to be by him paid over to the party entitled to them, and must state within what time they shall be paid. If they are not paid within that time, whether the party is or is not bound by any recognizance conditioned to pay them (*a*), the clerk of the peace or his deputy, upon application of the party entitled to the costs, or of any person on his behalf, and on payment of a fee of one shilling, is to grant a certificate (*b*) that the costs have not been paid, and upon production thereof to any justice for the same county or place a warrant of distress may issue, and in default of distress a warrant of commitment for any time not exceeding three calendar months, unless such costs, together with the costs of the distress and of the commitment and conveying to prison (if ordered), shall be sooner paid.

Amount of costs to be specified in the order.

The Court of Quarter Sessions cannot delegate their authority, but must themselves tax the costs during their

(*u*) Notwithstanding these words the order should direct the costs to be paid to the clerk of the peace, to be handed over by him to the other party; *Gay v. Matthews*, 33 L. J., M. C. 14.

(*x*) 12 & 13 Vict. c. 45, s. 5.

(*y*) See *R. v. Huntley*, 3 El. & Bl. 172; 18 Jur. 745, S. C.; *R. v. Hellier*, 17 Q. B. 229.

(*z*) See *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58, affirmed in error, 33 *Id.* 14; *R. v. Hellier*, 17 Q. B. 229; *R. v. Huntley*, 3 El. & Bl. 172; 23 L. J., M. C. 106, S. C.; *R. v. Binney*, El. & Bl. 810; 22 L. J., M. C. 127, S. C.; *R. v. JJ. Ely*, 5 El. & Bl. 489; 25 L. J., M. C. 1. The solicitor and not the client is liable to the clerk of the peace for fees connected with the entering, &c. of an

appeal at sessions; *Langridge v. Lynch*, 34 L. T. 695.

(*a*) The 5th section of 12 & 13 Vict. c. 45, includes appeals in which the appellant has entered into recognizances to pay costs, and a distress warrant may issue for them on the certificate of the clerk of the peace that they remain unpaid; *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 123. The act applies to the allowance of the accounts of a surveyor of highways; *R. v. Padwick*, 8 El. & Bl. 704; 27 L. J., M. C. 113. It does not apply to the Crown; *R. v. Beadle*, 7 E. & B. 492; 26 L. J., M. C. 111. See *Moore v. Smith*, 1 El. & Bl. 597; 28 L. J., M. C. 126, as to difference between this act and 20 & 21 Vict. c. 43.

(*b*) See form, Appendix.

sitting, and specify in their order the amount of costs to be paid. They cannot order a party to pay costs to be taxed by the clerk of the peace, but they may direct him to tax the costs in their aid, and, adopting his taxation as their own act, insert the amount in their order (*c*), provided all this be done before the end of the sessions (*d*), or in case of an adjournment on the adjournment day (*e*); but by *consent* the costs may be taxed after the sessions at which judgment was given (*f*). Delegation of authority.

Where an order was confirmed subject to a case, nothing being said about costs, and afterwards the appellant abandoned the case, it was held that a subsequent sessions could not grant to the respondents the costs of the appeal, as the sessions at which the appeal was heard and determined alone had jurisdiction over the costs (*g*); and where, in a similar case, the costs were ordered by the Court of Quarter Sessions to abide the result, and the Court of Queen's Bench quashed the conviction, saying nothing about costs, it was held too late afterwards to tax them at the Quarter Sessions, there being nothing further to be done there, as the conviction had been removed from them and quashed (*h*).

The Court of Quarter Sessions has authority to make a standing order, that in all appeals costs shall follow the event of their judgment, unless the justices who hear the appeal shall order to the contrary (*i*).

(*c*) *Per Cur.* in *Selwood v. Mount*, 1 Q. B. 726, 735; *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125. See *R. v. JJ. Ely*, 5 El. & Bl. 489; 1 Jur., N. S., 1017; 25 L. J., M. C. 1; *R. v. Little Hatfield*, Q. B., Jan. 15th, 1856. See *ante*, p. 228, n. (*x*), as to a blank being left for the costs.

(*d*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125.

(*e*) *R. v. JJ. Hampsh.*, 33 L. J., M. C. 104; *Raunsley v. Hutchinson*, L. R., 6 Q. B. 305; 40 L. J., M. C. 97; 23 L. T. 843; 19 W. R.

436; *R. v. Phillips*, 29 L. T. 100.

(*f*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125; *Ex parte Shrewsbury and Hereford Railway Company*, 19 J. P. 274; 25 L. T. 65, S. C.

(*g*) *R. v. JJ. Staffordsh.*, 7 El. & Bl. 935; 26 L. J., M. C. 179; and see *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125; and *R. v. JJ. Hants*, 32 *Id.* 47.

(*h*) *R. v. JJ. Hants*, 32 *Id.* 46.

(*i*) *Freeman v. Read*, 9 C. B., N. S. 301; 30 L. J., M. C. 125.

The Highway Act (5 & 6 Will. 4, c. 50, s. 90) requires the Court of Quarter Sessions to award costs (*k*) in certain cases. It was held they could not be awarded generally in the terms of the act, but that the order must specify the amount. Sect. 90 of that act provides that the costs shall be recoverable in the same manner as penalties under the act. Sect. 103 enacts that all penalties inflicted by the act for any offence, and all costs ordered by authority of the act (the manner of recovering which is not otherwise directed), shall, on conviction of the offences respectively, or upon order made as aforesaid, be levied by distress and sale. It was held, that non-payment of the costs ordered by sessions, under sect. 90, was not an "offence" within the act, and on which the party could be convicted on sect. 101, and that a warrant of distress under sect. 103, founded not on the order itself, but on the subsequent conviction for non-payment, was void (*l*).

Enforcing
orders of
sessions.

It is further enacted by sect. 18 of 12 & 13 Vict. c. 45, that in all cases where any order is made by a Court of General or Quarter Sessions, the Queen's Bench Division, or any justice of that Court at Chambers, either in term or in vacation, upon the application of any person entitled to enforce such orders, and upon the production of a copy thereof under the hand of the clerk of the peace, or his deputy, and upon proof (*m*) of refusal or neglect to obey such order, may direct such order to be removed into the Queen's Bench Division, and thereupon it shall be of the same force and effect, and may be enforced in the same

(*k*) And a mandamus will be granted to them, to enter continuances in order to award costs, *R. v. JJ. Yorksh.*, 2 B. & S. 811; 31 L. J., M. C. 271.

(*l*) *Selwood v. Mount*, 1 Q. B. 726; and see *R. v. Long*, *Id.* 740; *R. v. Clark*, 5 *Id.* 887; *R. v. Mortlock*, 7 *Id.* 459; *R. v. JJ. Westmoreland*, 1 D. & L. 178; *R. v. Surveyor of Highway of Lambeth*, 3 Com. L. R. 85; *R. v. Huntley*, 3

El. & Bl. 172; *R. v. Southampton Dock Company*, 17 Q. B. 83; *R. v. Hellier*, *Id.* 229; see also *Lock v. Sellwood*, 1 Q. B. 736, *S. P.*, where it was also held that no property passed to the vendee of goods seized and sold under such a warrant. The vendee was not a *bona fide* one, but the Court intimated that *bona fides* would make no difference in their opinion.

(*m*) *Semble* by affidavit.

manner, as a rule made by the said Queen's Bench Division; and all the reasonable costs attendant upon the application and removal shall be recoverable in the same manner as if they were part of the order.

No *certiorari* is necessary to remove the order to the Queen's Bench Division under this section (*n*); when the order is brought up for the purpose of being enforced, it is open to the defendant, by an original application, to object to the illegality of it (*o*); and the Court will entertain objections to faults apparent on the face of a conviction brought up with the order of sessions confirming it, although the *certiorari* is taken away by the statute under which the conviction has been made (*p*).

It had been decided that the sessions could not award an attachment for contempt in not complying with their orders, the proper method being by indictment; but when an order was confirmed by the Court above, it might be enforced by attachment (*q*). Now, however, by the above section the effectual and summary mode of execution or attachment is provided for the enforcing of all orders of sessions whatever, whether confirmed by the Court above or not.

Where an appeal is heard and determined by the sessions, and there is an unreasonable delay in issuing process to enforce the order of the Court, a *mandamus* or rule will be granted to compel them to issue such process (*r*).

It should here be observed that by 11 & 12 Vict. c. 44, s. 6, where a warrant is granted by a justice on a conviction or order, which has been or is afterwards confirmed on appeal, he is not liable to an action for anything done on appeal, Effect of confirming conviction on appeal upon liability of magistrate issuing warrant.

(*n*) *Hawker v. Field*, 20 L. J., M. C. 41.

(*o*) *R. v. Hellier*, 17 Q. B. 229; 21 L. J., M. C. 3; see *R. v. Huntley*, 3 El. & Bl. 172, *supra*, and *Ex parte Overseers of Fletton*, 29 L. J., M. C. 205.

(*p*) *R. v. Hyde*, 21 L. J., M. C. 94.

(*q*) *R. v. Chaffey*, 2 Ld. Raym. 858.

(*r*) *R. v. JJ. Warwicksh.*, 4 Nev. & Man. 370; 2 A. & E. 768; 11 & 12 Vict. c. 44, s. 5.

under the warrant by reason of any defect in the conviction or order.

Interested
justice present
during appeal. We have already considered the effect of a justice interested in the appeal being present during the hearing of it (s).

(s) *Ante*, pp. 43—52. See also
R. v. JJ. London, 18 A. & E. 416,
n.; *R. v. JJ. Suffolk, Id.* 416;

*Ranger v. The Great Western Rail-
way Company*, 5 H. L. Cas. 72.

CHAPTER IV.

APPEAL BY SPECIAL CASE FOR THE OPINION OF A
SUPERIOR COURT ON A POINT OF LAW UNDER 20 &
21 VICT. C. 43, AND 42 & 43 VICT. C. 49, S. 33.SECT. 1.—*Under 20 & 21 Vict. c. 43.*

| | |
|---|---------------------------------------|
| 1. <i>Provisions of Statute</i> . . . 323 | 7. <i>Who to begin</i> . . . 329 |
| 2. <i>What cases within</i> . . . 325 | 8. <i>The argument</i> . . . 329 |
| 3. <i>Recognizance</i> . . . 326 | 9. <i>Amendment</i> . . . 330 |
| 4. <i>Transmitting case</i> . . . 326 | 10. <i>Costs</i> . . . 331 |
| 5. <i>Entering case for hearing</i> . 327 | 11. <i>Certiorari issuing through</i> |
| 6. <i>Delivery of copies of the case</i> | <i>case stated</i> . . . 332 |
| <i>before argument</i> . . . 328 | |

THE provisions of 20 & 21 Vict. c. 43, will be found in the Appendix, and it is sufficient here to state that its general effect is to enable the party to *an information or complaint* determinable by justices in a summary way, if dissatisfied with their decision as being *erroneous in point of law*, to obtain the opinion of a superior Court thereon by means of a case stated and signed by the justices for that purpose (a).

Provisions of
20 & 21 Vict.
c. 43.

If, however, the justices are of opinion that the application to them for the case is merely frivolous, they may refuse to state it (subject to review by a superior Court (b)),

(a) 20 & 21 Vict. c. 43, s. 1. "The justices cannot make us a court of appeal on a question of fact." Per Blackburn, J., 82 L. J., M. C. 112; and see *R. v. Raffles*, 45 L. J., M. C. 61.

(b) An application under sect. 5 of the act, for rule calling on justices to show cause why a case should not be stated for the opinion of the Court, should be made to the Queen's Bench Division of the High Court of Justice. *Re Ellershaw*, 1 Q. B. D. 481; 45 L. J.,

M. C. 163. A justice cannot refuse to state a case on the ground that an objection has not been formally brought to his notice, where the objection is of such a kind as goes to the root of the whole matter before him for adjudication, and one therefore which he must have been presumed to have known. *Ex parte Markham*, 21 L. T. 748; *R. v. JJ. Rutlandshire*, 13 L. T. 722. Justices may now show cause by affidavit whenever their decision is called in question in any superior

unless the application is made by or under the direction of the Attorney-General, in which case they have no discretion in the matter, but must state the case (c). The power of appeal to the superior Court under this statute, if exercised, operates as an abandonment of the right of appeal to the Quarter Sessions, if such right exists in the particular case (d); but although a particular Act may give a power of appeal from the justices to the Quarter Sessions, such power does not deprive a party of the right to have a case stated for the opinion of a superior Court under this statute (e). The appellant must comply with certain conditions in order to have the benefit of the statute; for instance, the application for the case must be made within three days after the determination of the justices, and the case must be transmitted by the appellant to the superior Court within three days after he has received it, having first given notice in writing of the appeal with a copy of the case to the respondent (f); the appellant has also to enter into a recognizance conditioned to prosecute the appeal without delay and to pay the costs (if any) awarded by the superior Court, and to appear (if discharged from custody) to receive judgment, unless the decision be reversed (g). No *certiorari* is required to remove the conviction or order appealed against (h). The Court may remit the case to the justices for amendment (i), and make

court, see 35 & 36 Vict. c. 26, *post*, Appendix. The affidavit must be sworn by the justice himself. *R. v. Sperling*, 21 W. R. 461; *R. v. J.J. Exeter*, 42 L. J., M. C. 35. It seems that a Judge at chambers can order a case to be stated; *Ex parte Smith*, 3 H. & N. 227; 27 L. J., M. C. 186; and see sect. 8 of the Act.

(c) Sects. 4, 5.

(d) Sect. 14.

(e) *Steele v. Brannan*, L. R., 7 C. P. 261; 41 L. J., M. C. 85; *Muir v. Hore*, 47 L. J., M. C. 17; *Lower v. Wigmore*, L. R. 7 C. P. 386; 27 L. T. 148.

(f) Sect. 2. It seems open to

argument whether the time should now be three days or seven days, *post*, p. 333.

(g) Sect. 3, and see sect. 13. If the notice is given to the justices within the three days, the recognizance may be entered into at any time before the case is stated and delivered. *Stanhope v. Thorsby*, L. R., 1 C. P. 423; 35 L. J., M. C. 182; 14 W. R. 651. The procedure as to enforcement of recognizance is now under the Summary Jurisdiction Acts. See 47 & 48 Vict. c. 43.

(h) Sect. 10.

(i) Sect. 7.

such order as to costs as they may think fit; but the justices are not to be liable to any costs by reason of the appeal (*k*), nor, after the decision of the superior Court, to any action for enforcing the order or conviction (although it may be defective) (*l*).

The dismissal of a complaint or information is within the statute (*m*). An order under Lord Campbell's Act for the destruction of obscene publications (*n*), and the question whether a performance is theatrical, so as to be illegal without the licence of the Lord Chamberlain (*o*), have been held to be within the statute. But the statute does not apply where the appellant alleges that he has been improperly rated, as he should appeal to the sessions (*p*), and it was not intended to substitute special cases for the old mode of appeals (*q*). Nor does the act apply where justices refuse to enforce the payment of rates, the validity of which they have no power to inquire into, if good on their face and unappealed against (*r*); and this is so, although they may be authorized by a local act to grant a warrant of distress, unless the party summoned prove that he is not "chargeable with or liable to the rate" (*s*).

What cases are within the statute.

What not.

The act does not apply where justices refuse to make an order authorizing the local authority to enter premises under sect. 305 of the Public Health Act, 1875, inasmuch as their decision is not the determination of a complaint,

(*k*) Sect. 6.

(*l*) Sect. 9.

(*m*) *Davy v. Douglas*, 4 H. & N. 408; 28 L. J., M. C. 193.

(*n*) *Steele v. Brannan*, L. R., 7 C. P. 261; 41 L. J., M. C. 85.

(*o*) *Wigan v. Strange*, L. R., 1 C. P. 175.

(*p*) *R. v. JJ. Gloucestersh.*, 2 El. & El. 420; 29 L. J., M. C. 117; *Luton Board of Health v. Davis*, 29 L. J., M. C. 173.

(*q*) Per Crompton, J., *Wheeler v. Birmingham*, 26 L. J., M. C.

176, n.

(*r*) *Walker v. Great Western Railway Company*, 2 El. & El. 325; 29 L. J., M. C. 107, 189; *Wheeler v. Birmingham*, 29 L. J., M. C. 175, n.; *Sparrow v. Impington, Id.* 176, n. In such cases the proper course seems to be to apply for a rule under 11 & 12 Vict. c. 44, s. 5, commanding the justices to issue their warrant.

(*s*) *Ex parte May*, 2 B. & S. 426; 31 L. J., M. C. 161.

and the application to make such an order is one wholly within their discretion to grant or refuse (*t*).

The act does not apply to a decision of justices called in to decide a dispute under the Friendly Society Acts, it having been enacted that such decision *shall be binding* and conclusive on all parties (*u*). It would appear, from *Sweetman v. Guest* (*x*), that when the function of the justices is merely ministerial this statute does not apply (*y*).

Recognizance. The recognizance may be entered into by the appellant at any time within the three days allowed for applying for the case, and need not be entered into simultaneously with the making of the application (*z*).

Transmitting case, &c. The condition as to transmitting the case to the Court within three days after the appellant has received it must be strictly performed, otherwise the respondent may apply by way of motion to strike the case out of the Crown paper (*a*), or take the objection at the hearing of the case (*b*); and it is not sufficient for the appellant's solicitor merely to transmit it to his London agent within the three days (*c*), but it must be lodged in the Crown Office within that period. So written notice of the appeal, and a copy of the case, must be given to the respondent before the case is transmitted to the Court (*d*); and it is not sufficient to post them within the three days, if they do not reach him until after the case has been lodged (*e*).

(*t*) *Diss Urban Sanitary Authority v. Aldrich*, 2 Q. B. D. 179, 285; 46 L. J., M. C. 183.

(*u*) *Callaghan v. Dolwin*, L. R., 4 C. P. 288; 38 L. J., M. C. 110; overruling *R. v. Lambarde*, L. R., 1 Q. B. 388.

(*x*) L. R. 3 Q. B. 262; 37 L. J., M. C. 60; and see *West v. Potts*, 40 L. J., M. C. 1 n. (1).

(*y*) But see now as to cases stated under s. 83 of Summary Jurisdiction Act, 1879, *post*, p. 332.

(*z*) *Chapman v. Robinson*, 1 El. & Bl. 25; 28 L. J., M. C. 30; *Stanhope v. Thorsby*, *supra*. See *ante*, p. 285.

(*a*) The Court has power to grant the costs of a rule to show cause why it should not be struck out of the list; *G. N. R. v. Inett*, 2 Q. B. D. 284; 46 L. J., M. C. 237; *McIntosh v. Lord Advocate*, W. N. May 6, 1876.

(*b*) *Peacock v. Queen*, 27 L. J., C. P. 224; but see *G. N. R. v. Inett*, *supra*.

(*c*) *Banks v. Goodwin*, 32 L. J., M. C. 87.

(*d*) *Edwards v. Roberts* [1891], 1 Q. B. 302.

(*e*) *Ashdown v. Curtis*, 31 L. J., M. C. 216.

The provision as to the transmission of the case within the three days cannot be waived (*f*). It has, however, been said, that when an appellant has done all that he can to comply with the statute, but through the act of the other party he has been prevented from fulfilling its conditions, there might probably be a relaxation of the rule in his favour (*g*); and where the respondent could not be found, it was held sufficient to serve on her solicitor, who appeared before the magistrates, the notice of appeal and copy of the case within three days, it appearing that they had afterwards come to her hands (*h*).

Sunday is not excluded in counting the three days, and therefore where the decision of the justices took place on a Thursday, and the application to them to state a case was not made until the following Monday, it was held to be too late (*i*). Where the appellant received the case from the justices on Good Friday, and transmitted it to the proper Court on the following Wednesday, it was held that as the offices of the Court were closed from Friday until Wednesday, the appellant had transmitted the case as soon as it was possible to do so, and therefore had sufficiently complied with the requirements of the second section (*k*). If, after the expiration of the three days, the case remain in the appellant's hands, and he take it back to the justices, they have no power of amending it; and if they do so in fact, the appellant does not gain a further period of three days from the amendment for transmitting the case to the Court (*l*).

The case is to be entered at the Crown Office for Entering case
for hearing.

(*f*) *Morgan v. Edwards*, 5 H. & N. 415; 29 L. J., M. C. 108.

(*g*) *Woodhouse v. Woods*, 29 L. J., M. C. 149.

(*h*) *Syred v. Carruthers*, El. Bl. & El. 469; 27 L. J., M. C. 273.

(*i*) *Peacock v. The Queen*, 27 L. J., C. P. 224; and see *Rowberry v. Morgan*, 9 Exch. 730; *Mumford v. Hitchcock*, 14 C. B., N. S. 361; 32 L. J., C. P. 168, and *Wynne v.*

Ronaldson, 12 L. T. 711; 18 W. R. 899.

(*k*) *Mayer v. Harding*, L. R., 2 Q. B. 410; 16 L. T. 429.

(*l*) *The Gloucester Board of Health v. Chandler*, 32 L. J., M. C. 66. *Quære*, whether the justices can amend the case within the three days after they have delivered it to the appellant? *Id.* See *post*, "Amendment," p. 330.

hearing at the request of either party without any order for a *concilium* eight clear days before the day on which it is set down for argument, and notice thereof is to be given forthwith to the opposite party (*n*). Every special case is to be divided into paragraphs, which as nearly as may be is to be confined to a distinct portion of the subject, and every paragraph is to be numbered consecutively (*o*).

Delivery of
copies of the
case before
argument.

The party or solicitor entering the case for argument in the Crown paper, must, two days before the day appointed for argument, deliver two copies of the case for the use of the judges at the Crown Office. If they are not delivered the other party may, on the day following, deliver such copies as ought to have been so delivered by the party making default, and the party making default is not to be heard until he has paid for such copies or deposited at the Crown Office a sufficient sum to pay for the same. In default of both parties the case is to be struck out, unless otherwise ordered (*p*).

Under the Judicature Act, 1873 (*q*), appeals from petty sessions under 20 & 21 Vict. c. 43, are heard and determined by divisional Courts of the High Court of Justice, and the determination of such appeals is final, where it is in a criminal cause or matter. For by section 47 of the Judicature Act, 1873 (*r*), no appeal shall lie "from any judgment of the High Court in any criminal cause or matter," save for error of law apparent upon the record (*s*). An appeal lies from a Divisional Court upon a matter not criminal; but the leave of the Divisional Court is necessary (*t*). All such appeals are entered, with other appeals

(*n*) Rule 141, Crown Office Rules, 1886.

(*o*) Rule 142.

(*p*) Rules 143, 146.

(*q*) 36 & 37 Vict. c. 66, s. 45.

(*r*) 36 & 37 Vict. c. 66.

(*s*) See *Mellor v. Denham*, 5 Q. B. D. 467; 49 L. J., M. C. 89; *Cottam v. Guest*, 50 L. J., Q. B. D. 176; *Ex parte Alice Woodhall*, 20 Q. B. D. 835; 57 L. J., M. C. 71.

(*t*) Upon a summons to discontinue a nuisance, a special case was stated by the justices, and after the appeal came before the Divisional Court that Court refused to give leave to appeal to the Court of Appeal on the ground that it was a quasi-criminal proceeding. *Lea Conservancy Board v. Tottenham Local Board*, 64 L. T. 198.

from inferior Courts, in one list by the officers of the Crown Office Department of the central office, and are heard by a divisional Court of the Queen's Bench Division (*u*).

The practice of the Courts has been thus clearly stated ^{Who to begin.} by Lord Justice *Bramwell* (*x*): "The general rule is, that the appellant shall begin. An exception exists in the case of an appeal against a conviction. There the respondent begins, because the burthen of proof is on him ; but here the burthen of proof is on the appellant, for here he has to make out that an offence was committed, the justices having held that there was no offence. He ought therefore to begin."

If the respondent does not appear, the appellant in order ^{The argu-} to obtain the judgment of the Court must show that the ^{ment.} decision of the justices was wrong (*y*).

Although the evidence is set forth in the case, yet the superior Court does not put itself in the position of the justices in deciding on its weight or sufficiency, but accepts their finding upon facts within their jurisdiction as conclusive, whatever may be the opinion of the Court itself as to the value of the evidence (*z*). The superior Court in such a case has only to see whether the determination is erroneous "in point of law" (*a*). The main question decided in the case, namely, whether an offence has or has not been committed within the statute, would be subject to review as involving a question of law, but the subordinate facts leading up to it would be left entirely to the decision of the justices. The circumstances which lead to the conclusion of law are for the justices ; it is for the superior Court to say whether they are sufficient to warrant

(*u*) Ord. LVIX. r. 4, and see *Donovan v. Brown*, 48 L. J., Ex. D. 456.

(*x*) *Ellis v. Kelly*, 30 L. J., M. C. 35, in which case the justices had dismissed an information for falsely pretending to be a physician under 21 & 22 Vict. c. 90.

(*y*) *Syred v. Curruthers*, El. Bl. & El. 469 ; 27 L. J., M. C. 273.

(*z*) *Cornwell v. Sanders*, 3 B. & S. 206 ; 32 L. J., M. C. 6, *dissentiente* Wightman, J.

(*a*) See *Taylor v. Oram*, 1 H. & C. 370 ; 31 L. J., M. C. 252.

the conclusion (b). The justices have no right to send a statement of facts, and ask an opinion on them, except only so far as they raise a point of law (c).

The Court will hear and determine questions of law arising on the facts stated by justices, although they were not taken before the justices, or expressly reserved for the consideration of the Court (d).

Justices have no right to be heard in support of their decision upon the argument of a case stated by them for the opinion of the Court under s. 33 of the Summary Jurisdiction Act, 1879 (e).

The Divisional Court has no power under 20 & 21 Vict. c. 43, s. 6, to reduce a penalty on a case stated by justices (f).

Amendment.

By the 6th section, the Divisional Court has power to amend "the determination in respect of which the case has been stated, or remit the matter to the justices;" and where an order had been made by justices under a wrong section of a statute, the Court considered that they had power to draw it up under the right section, but declined to do so, and remitted the case to the justices for rehearing, in order not to deprive the appellant of his appeal to the Quarter Sessions, which was given by the same act (g).

In vacation time, where the matter is urgent, the case may be sent back for amendment by order of a judge at chambers (h).

(b) See *R. v. Raffles*, 45 E. J., M. C. 61; and per Wightman, J., *Belasis v. Hannant*, 31 L. J., M. C. 228.

(c) Per Crompton, J., *Id.*

(d) *Knight v. Halliwell*, L. R., 9 Q. B. 412; 43 L. J., M. C. 113. Before this case, it was held that the Court had no power to give an opinion on any question not submitted by the magistrates for the opinion of the Court, although the parties might desire and ask for judgment upon it (*Overseers of St. James v. Overseers of St. Mary*, 29 L. J., M. C. 26); and that the ap-

pellant would not be allowed to take objections which were not raised before the justices (*Parkis v. Huxtable*, 28 L. J., M. C. 221); but the rule appeared to be different as to the respondent. *Topping v. Key-sell*, 33 L. J., C. P. 229; *Stancliffe v. Clark*, 7 Ex. 439.

(e) *Smith v. Butler*, 16 Q. B. D. 349.

(f) *Evans v. Hemingway*, 52 J. P. 184.

(g) *Shackell v. West*, 29 L. J., M. C. 45.

(h) Rules 60 and 80 of Crown Office Rules, 1886.

The Court as a rule will not entertain a motion to send a case back to be amended before the case comes on for argument (*i*).

The costs are in the discretion of the Court, but, as a Costs. general rule, will be given to the successful party (*k*). Costs may be awarded for or against the Crown, whether directly or indirectly a party to the information (*l*). The unsuccessful party generally pays costs, although he may have argued merely in support of the decision of the magistrate (*m*). But where it appeared that the justices had erroneously adjudged forfeiture of a beerhouse licence in addition to a penalty, the Court, while upholding the conviction itself, refused to order the payment of costs by the appellant, on the ground that if the conviction had been drawn up containing such an adjudication it would have been quashed (*n*). The successful party should ask for costs immediately after the Court have given judgment in his favour (*o*). It is not usual to allow costs against a respondent who does not appear (*p*). Costs are granted even though the case be struck out on account of the failure of appellant to transmit the case within three days (*q*). Where the case was remitted to the justices for an amended statement, but not returned within the proper time, and therefore abandoned; it was held that the

(*i*) *Christie v. St. Luke, Chelsea*, 8 El. & Bl. 992; 27 L. J., M. C. 153. Where justices in a case stated omitted to set out a material document, which, as appeared by affidavit was in evidence before them, the Court sent back the case to them for amendment, on motion, before the case came on for argument. *Yorkshire Tire and Axle Co. v. Rotherham Local Board of Health*, 4 C. B., N. S. 362; 27 L. J., C. P. 235.

(*k*) By Rule 301 of the Crown Office Rules, 1886, Order 57 (costs) of the Rules of the Supreme Court, 1883, as far as it is applicable, is to apply to all criminal proceedings on the Crown side.

(*l*) *Moore v. Smith*, El. & El. 597; 28 L. J., M. C. 156; see as to the Crown's non-liability to costs in general, *R. v. Beadle*, 7 E. & B. 492; 26 L. J., M. C. 111.

(*m*) *Venables v. Hardman*, 1 El. & El. 79; 28 L. J., M. C. 83; *Nicholls v. Hall*, 42 L. J., M. C. 105; *Copley v. Burton*, L. R., 5 C. P. 489; 39 L. J., M. C. 141.

(*n*) *Cross v. Watts*, 13 C. B., N. S. 239; 32 L. J., M. C. 73.

(*o*) *Budenburg v. Roberts*, L. R., 2 C. P. 292; *Cook v. Montague*, 28 L. T. 494; 21 W. R. 670.

(*p*) *Smith v. Butler*, 16 Q. B. D. 349; 34 W. R. 417; 50 J. P. 260.

(*q*) *G. N. R. v. Inett*, 2 Q. B. D. 284; 46 L. J., M. C. 237.

Court still had jurisdiction to order the appellant to pay the respondent's costs (r).

Effect of case being stated on issuing of *certiorari*.

It seems, that where the objection goes to the jurisdiction, a *certiorari* may issue, although a case has been stated under the above act, and although it is still pending for decision (s).

Where a party applies for a case to be stated under the above act, he is to be deemed to have abandoned his right of appeal to quarter sessions (t).

SECT. 2.—Under 42 & 43 Vict. c. 49, s. 33.

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| 1. <i>Stating case under</i> . . . 332 | 3. <i>Cases within Statute</i> . . . 334 |
| 2. <i>Time for stating</i> . . . 333 | 4. <i>Mandamus to state a case</i> . 335 |

Appeal by special case under 42 & 43 Vict. c. 49, s. 33.

We have seen that under 20 & 21 Vict. c. 43, a decision of a justice could not be questioned except upon the *determination of an information or complaint*, but now s. 33 of the Summary Jurisdiction Act, 1879 (u), allows a case to be stated upon a question of law relating to a *conviction, order, determination, or other proceeding of a Court of summary jurisdiction* (x). The section is as follows :—

“(1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a Court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the Court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the Court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

| | |
|--|--|
| (r) <i>Crowthor v. Boulth</i> , 13 Q. B. D. 680; 49 J. P. 135; 33 W. R. 150. | M. C. 45. |
| (s) <i>R. v. Hodgson</i> , 12 W. R. 423. | (u) 42 & 43 Vict. c. 49. |
| (t) 20 & 21 Vict. c. 43, s. 14. | (x) For the definition of a Court of summary jurisdiction, see <i>ante</i> , p. 110. |
| And see <i>Shackell v. West</i> , 29 L. J., | |

“(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this act, and the case shall be heard and determined in manner prescribed by rules of Court made in pursuance of the Supreme Court of Judicature Act, 1875, and the acts amending the same; and, subject as aforesaid, the act of the sessions of the 20th and 21st years of the reign of her present Majesty, chapter 43, intituled ‘An act to improve the administration of the law so far as respects summary proceedings before justices of the peace,’ shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that act :

“Provided that nothing in this section shall prejudice the statement of any special case under that act.”

An application to a Court of summary jurisdiction under the above section to state a special case is to be made in writing, and a copy left with the clerk of the Court, and may be made at any time within seven clear days from the date of the proceeding to be questioned, and the case is to be stated within three calendar months after the date of the application, and after the recognizance has been entered into (y). These statutory requirements as to proceeding by case stated are conditions precedent of the right of appeal, and cannot be waived by the parties or justices. Where the appellant having been convicted by a Court of summary jurisdiction, consisting of five justices, made an application in writing for a case to two only of such justices, who stated and signed the case, it was held that the appellant had not complied with the directions of Rule 18, and that there was consequently no power to state the case (z). Where no notice of application for the case in writing had been given to the justices making the order appealed against, though a

Time for
stating special
case.

(y) Rule 18 of Summary Jurisdiction Rules, 1886.

(z) *Westmore v. Paine* [1891], 1

Q. B. 482; *South Staffordshire Waterworks Co. v. Stone*, 19 Q. B. D. 168; 56 L. J., M. C. 122.

notice of application in writing had been served on their clerk, it was held that there was no power to state a case (a).

What cases
are within the
statute.

This Act now applies to all proceedings before justices (b). For by section 13, sub-section 11, of the Interpretation Act, 1889, it is provided that "the expression 'Court of summary jurisdiction' shall mean any justice or justices of the peace . . . whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law."

Justices acting as licensing justices, under 9 Geo. 4, c. 61, are, by virtue of the above definition, a "Court of summary jurisdiction," within sections 31 and 38 of the Summary Jurisdiction Act, 1879, which provide respectively for service of notice of appeal from the decision of such a court upon their clerk, and for the statement of a case by them on a question of law (c).

Justices sitting to hear an application for the issue of a distress warrant for the non-payment of poor rates, are not necessarily exercising a ministerial duty, but are authorized to inquire into the validity of the objections taken by the party summoned, and to state a case for the opinion of the High Court (d).

A special case may be stated by justices under the 33rd section of the Summary Jurisdiction Act, 1879, upon an application to enforce payment of a general district rate under the 256th section of the Public Health Act, 1875 (e).

Where a police magistrate, acting under the Metropolis Management Act, 1855, section 129, decided that certain

(a) *Lockhart v. Corporation of St. Albans*, 21 Q. B. D. 188; 57 L. J., M. C. 118; 36 W. R. 801.

(b) Interpretation Act, 1879, 52 & 53 Vict. c. 63, s. 13, sub-sec. 11.

(c) *R. v. JJ. Glamorganhire* [1892], 1 Q. B. 621.

(d) *Fourth City Mutual Building Society v. West Ham Overseers* [1892], 1 Q. B. 661.

(e) *Sandgate L. B. v. Pledge*, 14 Q. B. D. 730; 52 L. T.; 49 J. P. 342.

ashes from the furnaces of an hotel were not "refuse of trade" within the section, and declined to state a case on the ground that the decision was "final and conclusive," and no point of law arose; it was held that, in the circumstances, there was a question of law upon the construction of section 129, and that the magistrate was not entitled to refuse to state a case (*f*).

An application for an order in the nature of a mandamus to justices to state and sign a case is by motion for an order *nisi* (*g*). During the sittings the application is to be made to a Divisional Court of the Queen's Bench Division; and in the vacation to a Judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such Judge that the matter is urgent (*h*).

As to the procedure on transmitting the case to the Crown Office, and on the hearing, &c., see *ante*, pp. 326, 327, 328.

(*f*) *R. v. Bridge*, 24 Q. B. D. 609; 59 L. J., M. C. 49; 62 L. T. 297.

(*g*) Rule 80 of Crown Office Rules, 1886.

(*h*) Rule 60.

Mandamus to state a case.

CHAPTER V.

OF THE REMOVAL OF THE COMMITMENT OR CONVICTION
BY HABEAS CORPUS AND CERTIORARI.

SECT. I.—Of Removal by Habeas Corpus.

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|---|-----|--|-----|
| 1. <i>Where the proper Remedy</i> | 336 | 10. <i>Proceedings on Return</i> | 339 |
| 2. <i>Where to apply</i> | 336 | <i>Ambiguous Return</i> | 340 |
| 3. <i>Who may apply</i> | 337 | <i>Return showing one good</i> | |
| 4. <i>How to apply</i> | 337 | <i>Cause of Detention</i> | 341 |
| 5. <i>Discharge of prisoner with-</i> | | <i>Controverting Return</i> | 341 |
| <i>out return</i> | 337 | <i>Want or excess of juris-</i> | |
| 6. <i>Costs of opposing Issuing of</i> | | <i>diction</i> | 346 |
| <i>Writ</i> | 337 | <i>Amendment of Return</i> | 347 |
| 7. <i>Service of the Writ.</i> | 337 | 11. <i>When Certiorari also neces-</i> | |
| 8. <i>Objections to Writ, how taken</i> | 338 | <i>sary</i> | 347 |
| 9. <i>Disobedience to Writ</i> | 338 | 12. <i>Order to be drawn up and</i> | |
| | | <i>return, &c., filed</i> | 348 |
| | | 13. <i>Appeal</i> | 348 |

Where the
proper
remedy.

Where to
apply.

IF there be any fault or illegality in the commitment alone, the defendant may obtain his discharge by suing out a writ of *habeas corpus ad subjiciendum* (a). An application for the writ is to be made to the High Court or a Judge thereof (b). If made to the Court the application is to be by motion for an order, which if the Court so direct may be made absolute *ex parte* for the writ to issue in the first instance ; or if the Court so direct they may grant an order *nisi* (c). If made to a Judge he may order the writ to issue *ex parte* in the first instance or may direct a summons for the writ to issue (d). It has of late years been the practice to grant the writ by a Judge at Chambers as well in the Sittings as in Vacation (e).

(a) The writ of *habeas corpus* at common law may be applied for, issued, and made returnable immediately at chambers ; *Re Leonard Watson and others* (the Canadian prisoners), 9 A. & E. 731. As to the writ issuing out of England into a colony or foreign dominion of the Crown, see *Id.* ; 25 Vict. c. 20 ; *Re Brown*, 33 L. J., Q. B. 193 ; *Ander-*

son's case, 30 *Id.* 129 ; *Crawford's case*, 13 Q. B. 613, 625 ; 18 L. J., Q. B. 225 ; and *R. v. Cowle*, 2 Burr. 856.
(b) Rule 235 of Summary Jurisdiction Rules, 1886.
(c) Rule 236.
(d) Rule 237.
(e) See Short and Mellor's Crown Practice.

A woman may move for a writ of *habeas corpus* on behalf of her husband (*f*); and where access to a prisoner was denied by the gaoler, the writ was granted on the application of the prisoner's father (*g*). Who may apply.

On the argument of an order *nisi* for a writ of *habeas corpus*, the Court may in its discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order is to be a sufficient warrant to any gaoler or constable or other person for his discharge (*h*). For some years this has been the practice of the High Court on applications for an *habeas corpus ad subjiciendum* (*i*). Discharge of prisoner without return.

No order for the issuing of a writ of *habeas corpus* is to be granted where the validity of any warrant, commitment, order, conviction, inquisition, or record shall be questioned, unless at the time of moving a copy of any such warrant, &c., verified by affidavit, be produced and handed to the officer of the Court before the motion be made, or the absence thereof accounted for to the satisfaction of the Court (*k*).

The costs of successfully opposing the issuing of the writ of *habeas corpus*, or the discharge of the prisoner thereunder, are not allowed (*l*). Costs of opposing issuing of writ.

The writ of *habeas corpus* is to be served personally, if possible, upon the party to whom it is directed; or if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with a servant or agent of the person confining or restraining, at the place where the writ. Service of the writ.

(*f*) *Cobbett v. Hudson*, 15 Q. B. 988. In *Ex parte Newton*, 16 C. B. 97; 24 L. J., C. P. 148, the father of a prisoner applied personally for the writ, but the Court said that, without laying down any invariable rule, they thought the application should be made by counsel.

(*g*) *Re Thompson*, 6 H. & N. 193; 30 L. J., M. C. 19.

(*h*) Rule 244 of the Summary

Jurisdiction Rules, 1886.

(*i*) See *Ex parte Eggington*, 2 El. & Bl. 717; 23 L. J., M. C. 44. Objection was made by counsel to this form, but the Court observed that it was a usual and convenient course, as it saved expense. See *Re Geswood*, 2 El. & Bl. 952; *Clark v. Smith*, 3 C. B. 984.

(*k*) Rule 35 of the Crown Office Rules, 1886.

(*l*) *Re Cobbett*, 14 M. & W. 175.

prisoner is confined or restrained, and if the writ be directed to more than one person, the original delivered to or left with such principal person, and copies served or left on each of the other persons in the same manner as the writ (*m*).

Objections to writ, how taken.

Objections to the writ for irregularity are to be taken by way of substantive motion to set it aside, and not upon the motion for the discharge of the prisoner upon the return (*n*).

It seems, that if the writ has been obtained on fraudulent misrepresentation, the Court will quash it on motion ; but they will not do so merely because it appears that the judge who issued it abstained from inquiring into facts, which, if known to him, might have induced him to refuse it or only to grant a rule nisi for the writ (*o*), and the Court will seldom quash the writ upon grounds which may be returned to it (*p*).

Disobedience to writ.

If a writ of *habeas corpus* be disobeyed by the person to whom it is directed, application may be made to the Court on an affidavit of service and disobedience for an attachment for contempt. In vacation an application may be made to a judge in chambers, for a warrant for the apprehension of the person in contempt to be brought before him, or some other judge, to be bound over to appear in Court at the next ensuing sittings, to answer for his contempt, or to be committed to the Queen's prison for want of bail (*q*).

Upon the delivery of the writ to the gaoler, or other officer who holds the party in custody, the warrant of commitment is returned along with the body of the prisoner (*r*) ; and if it appear to be illegal or insufficient

(*m*) Rule 239 of the Crown Office Rules, 1886.

(*n*) *R. v. Baines*, 12 A. & E. 210—213 ; *Ex parte Hughes*, 18 Jur. 447 ; *Re Collier and Bailey*, 3 El. & Bl. 607.

(*o*) *Carus Wilson's case*, 7 Q. B. 984.

(*p*) *Carus Wilson's case*, 7 Q. B. 984. As to amending the writ at the instance of the prisoner, see *Ex parte Davies*, 4 Bing. N. C. 17.

(*q*) Rule 240 of the Summary Jurisdiction Rules, 1886.

(*r*) Carth. 508.

upon the face of it, the Court before which the writ is returnable, quashes the commitment, and orders the defendant to be discharged (s). The return to the writ of *habeas corpus* is to contain a copy of all the causes of the prisoner's detainer indorsed on the writ, or on a separate schedule annexed to it (t).

When a return to the writ of *habeas corpus* is made, the return shall first be read, and motion then made for discharging or remanding the prisoner, or amending or quashing the return (u). When a prisoner is brought up by *habeas corpus* the counsel for the prisoner is to be first heard, and then the counsel for the Crown, and then one counsel for the prisoner in reply (x). Proceedings
on return.

The Court will not at the desire of the committing magistrates direct or advise the gaoler to substitute a return to a writ of *habeas corpus* for the one proffered to be made (y). The return is taken to be true at all events in the first instance, and need not be verified by affidavit (z).

Any magistrate whose decision is called in question in a superior Court by a rule to show cause or other process issued upon an *ex parte* application may now make his answer by an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue (a).

Upon objection to the return on behalf of the prisoner, counsel having been heard against the objection, only one counsel is allowed to reply in support of it (b).

The Court, upon the return to a writ of *habeas corpus*,

(s) See Bac. Ab. tit. "Habeas Corpus."

(t) Rule 241 of Crown Office Rules, 1886.

(u) Rule 243 of the Crown Office Rules, 1886.

(x) Rule 249.

(y) *Re Fletcher*, 1 D. & L. 726 ; and see *R. v. Turk*, 10 Q. B. 510.

As to substituting a good conviction or commitment for a bad one, see *ante*, p. 235.

(z) *The Canadian Prisoners' case*, 9 A. & E. 731.

(a) 35 & 36 Vict. c. 26, s. 2, see *post*, Appendix.

(b) *Carus Wilson's case*, 7 Q. B. 984.

have nothing before them but the warrant of commitment itself; and, therefore, where a commitment was "until the party should pay a fine to the king," without specifying any sum to be paid, the Court nevertheless refused to discharge him upon the commitment alone, till the conviction itself was brought before them; though when that was done, and it appeared that no precise sum was thereby awarded, the defendant was discharged (*c*).

We have, however, seen that, *prima facie*, the conviction, as recited in the commitment, is taken to be as recited, and it lies on the party asserting it to be different to bring it before the Court by *certiorari*, or, if that process is not available, by affidavit (*d*).

The *return* should set forth the description and authority of the persons by whom the commitment was made, by describing them as justices of the peace, &c. (*e*). And in the return the Court will intend nothing which ought to have been made the subject of distinct and positive allegation (*f*).

An insufficient return to a writ of *habeas corpus* is a contempt of Court, and an order for attachment thereon is appealable (*g*).

If the Court decides that the return is insufficient, the party making the return is thereby adjudged to be in contempt, and will be ordered to enter recognizances, himself and two sureties, to answer personal interrogatories, and to abide any further order the Court may make (*h*).

Ambiguous
return.

If there is ambiguity or uncertainty in the return, the prisoner will be discharged (*i*).

(*c*) *R. v. Elwell*, Str. 794; 2 *Ld. Raym.* 1514; and see tit. "Commitment," *ante*, p. 271 *et seq.*

(*d*) *Ante*, p. 274.

(*e*) *Ld. Raym.* 980.

(*f*) *Eden's case*, 2 *M. & S.* 226. See process by attachment for a false return, *R. v. Alves*, 8 *L. J.*, *Exch.* 229.

(*g*) *R. v. Barnardo*, 23 *Q. B. D.* 305.

(*h*) *Re Matthews*, 12 *Ir. C. L. Rep. Q. B.* 272.

(*i*) *Nash's case*, 4 *B. & A.* 295; *Attorney-General v. Le Revert*, 6 *M. & W.* 405; *Deybel's case*, 4 *B. & Ald.* 243; *Souden's case*, 4 *B. & Ald.* 249.

But if the return shows one good cause of detention, and another bad, the defendant will be remanded (*k*).

Return showing one good cause of detention.
Controverting return.

In considering the important question, whether the return to the *habeas corpus* can be controverted, a distinction must be drawn between those cases in which the writ issues at common law, or under the stat. 31 Car. 2, c. 2, or under the stat. 56 Geo. 3, c. 100.

The writ issued at common law on probable cause shown that a person was imprisoned without cause (*l*). The statute 31 Car. 2, c. 2, applies only to the writ of *habeas corpus* issuing on behalf of a person in custody for "criminal or supposed criminal matters," except treason and felony; and the stat. 56 Geo. 3, c. 100, applies only to cases of commitment or detainer, "otherwise than for some criminal or supposed criminal matter, and otherwise than for debt or on process in any civil suit."

At common law, it appears that at one time a defendant was allowed to traverse the return by plea (*m*), but it was afterwards held that it could not be traversed, although it might be confessed and avoided (*n*), and that for a false return the defendant's only remedy was by action (*o*). Subsequently, however, the Courts received affidavits impeaching the truth of a return on motion for an attachment, and it has been said that probably they would admit them on motion to quash the return (*p*).

If the case came within the stat. 31 Car. 2, c. 2, the Court would not receive affidavits impeaching the return (*q*).

(*k*) *R. v. Rogers*, 3 D. & R. 607; 1 D. & R. Mag. Ca. 59; *R. v. Richards*, 5 Q. B. 926; *Re Colbett*, 7 Q. B. 187; 2 Phillips (Chanc. Rep.) 289; *Exp. Crops*, 26 L. J., M. C. 201.

(*l*) Bac. Ab. Hab. Corp. B.; *Hobhouse's case*, 3 B. & Ald. 420; *Ex parte Knight*, 2 M. & W. 106; 2 Inst. 615.

(*m*) *De Vine's case*, O. Bridgm. 288.

(*n*) 4 A. & E. 765; *Re Clarke*, 2 Q. B. 619, 634.

(*o*) *R. v. Douglas*, 12 L. J., Q. B. 49; 2 Hawk. P. C. c. 15, s. 71; Cro. Eliz. 821.

(*p*) *The Canadian Prisoner's case*, 9 A. & E. 731; *Ex parte Martin*, 1 De Gex, 485; Cornei's Cr. Prac. 116.

(*q*) *Carus Wilson's case*, 7 Q. B. 984; *R. v. Batchelor*, 1 P. & D. 516; *R. v. Sheriff of Middlesex*, 11 A. & E. 273; *R. v. Rogers*, 3 D. & R. 607; *R. v. Clarke*, 2 Q. B. 619; *Brenan's case*, 10 Q. B. 492.

But if the case came within the stat. 56 Geo. 3, c. 100, then, by the express terms of sect. 3, affidavits were admissible for this purpose.

Thus sect. 3 of that stat. enacts, "that in all cases provided for by this act, although the return to any writ of *habeas corpus* shall be good and sufficient in law, it shall be lawful for the justice or baron before whom such writ may be returnable, *to proceed to examine into the truth of the facts set forth in such return, by affidavit or affirmation, and to do therein as to justice shall appertain.*" And sect. 4 enacts, "that the like proceedings may be had in the Court for controverting the truth of the return of any such writ of *habeas corpus* awarded as aforesaid, although such writ shall be awarded by the Court itself, or be returnable therein." And where prisoners in custody of an officer of customs on a charge of smuggling were brought up by *habeas corpus* at common law, it was held that they might controvert the truth of the return on affidavit by virtue of these sections. The question was, whether the prisoners were persons confined "otherwise than for some criminal or supposed criminal matter." After argument, *Abbott*, C. J., said: "If no decision has taken place upon the statute, it is probable that the point was never made before. The object of the *Habeas Corpus* Act, 31 Car. 2, c. 2, was to provide against delays in bringing to trial such subjects of the king as are committed to custody for criminal, or supposed criminal, matters. The person making this return is not an officer to whose custody these persons have been committed; but he is a person who, by the authority given him, has taken them into custody. It seems to me, therefore, that the writs of *habeas corpus*, in this instance, are not to be considered as writs issuing under the stat. 31 Car. 2, but as writs issuing at common law, under the general authority of the Court; and, consequently, that the discussion of the truth of the return is left open by virtue of the 56 Geo. 3, c. 100, s. 4. This is not the case of a committal to a gaoler, or an officer

of the Court, for an offence known as a crime ; and the only question is, whether this is a criminal matter. The object of 56 Geo. 3 was to give the party a summary remedy, by controverting the truth of a return, instead of putting him to bring an action for a false return. There is very good reason for not permitting the truth of a return to be traversed where the party is charged with a crime, for that would be trying him upon affidavits ; but here we are not called upon to try whether these persons have committed an offence, or that which may be called an offence. The objection to the proceedings against these persons is, that they have been carried a distance of 140 miles from the place where they were originally arrested. Part of the allegation in the return is, that they were taken to *Rochester* with their own consent. Now, I think the truth of the return, in that respect, may be controverted. The 56 Geo. 3 was passed in furtherance of the liberty of the subject, and therefore ought not to receive a restrained construction" (*r*).

It will be observed that in the preceding case the Court did not give a distinct answer to the question, whether the offence was a "criminal matter" or not, but came to a final decision rather upon the ground that the fact sought to be controverted was not the guilt of the prisoners, but whether they had consented to their removal for a long distance from the place of their arrest.

We have, on a former occasion, considered what is a "criminal matter" with reference to summary convictions and orders, and the observations then made are applicable to proceedings by *habeas corpus* (*s*).

But even in cases within 56 Geo. 3, c. 100, it must not be supposed that all statements appearing upon the return may be contradicted. There are certain questions which are wholly and exclusively within the province of the

(*r*) *Ex parte Beeching*, 6 D. & R. 209 ; 3 D. & R. Mag. Ca. 174 ; 4 B. & C. 136.

(*s*) *Ante*, pp. 122, 124, and cases there cited.

tribunal from which the commitment issued ; they cannot be opened again before another tribunal, unless it be by appeal to quarter sessions or on a case stated (*t*). Such, for instance, is the weight of evidence, the innocence or guilt of the defendant, the adjudication of contempt, and the finding of the facts which are referred by statute to the decision of the magistrates (*u*). No other Court (except the Court of Quarter Sessions on appeal) is competent to re-investigate these matters, and the rule is the same whether the proceeding be brought before it on return to *habeas corpus* or *certiorari*, or in an action against magistrates (*x*). On the other hand, there are certain extrinsic and collateral matters which do not fall within the above category, and which may be controverted by affidavit upon return made to a *habeas corpus* under 56 Geo. 3, c. 100. A few illustrations of this doctrine may be useful. Thus, in the preceding case, it will be seen that *Abbott*, C.J., rested his decision that affidavits were admissible mainly upon the ground that they were not offered for the purpose of showing the innocence of the defendants, but only that they were not taken to Rochester after their arrest with their own consent. "I think the truth of the return *in that respect*," said the learned judge, "may be controverted." In a more recent case (*y*), in which the Court refused to allow affidavits to be used for the purpose of contradicting statements made in the order of a Court of competent jurisdiction, *Patteson*, J., said, "All that the Courts have permitted has been to allege a collateral ex-

(*t*) *Ante*, p. 135.

(*u*) Conclusiveness of finding that a place is a highway ; *Mould v. Williams*, 5 Q. B. 469. That a conservatory is not "an erection" within 25 & 26 Vict. c. 102, s. 75 ; *St. George's Vestry v. Sparrow*, 33 L. J., M. C. 118 ; *Williams v. Adams*, 2 B. & S. 312 ; 31 L. J., M. C. 109.

(*x*) See *post*, "Certiorari," and *Dimes' case*, 14 Q. B. 554.

(*y*) *Re Clarke*, 2 Q. B. 619, in

which the commitment was for a contempt in not putting in an answer in the Court of the Master of the Rolls. The same point was decided in *Re Dimes*, 14 Q. B. 554, in which the Court also refused to grant time for the purpose of disclosing matters not apparent on the return, unless the nature of the facts to be sworn to was suggested, and it appeared that such affidavits would be available.

trinsic fact, confessing and avoiding, as it were, the disputed order. Here the object proposed is to contradict it, and there is no instance of such an attempt having been yielded to. *Brittain v. Kinnaird* (z) shows that a fact directly stated on a conviction is not to be controverted. Every order must show facts sufficient to give a jurisdiction, but the facts if so shown are not to be contested (a). In *R. v. The Justices of Somersetshire* (b), and other cases of the same class, no attempt was made to raise an objection on the proceedings themselves, but facts collateral to them were added to show want of jurisdiction." Accordingly, where the return alleged that the Court of Jersey had jurisdiction to try and punish the offence, and that the sentence was unreversed, the Court of Queen's Bench assumed it to be valid, and would not allow affidavits to be used in order to show that there was no jurisdiction to pass the sentence in question (c), or that the Court had acted inconsistently with the law of Jersey (d); and where, upon an indictment charging felony committed within the jurisdiction of the Central Criminal Court, a prisoner, after having pleaded not guilty, was tried, convicted and sentenced to imprisonment, and a writ of *habeas corpus* was applied for upon an affidavit showing that the offence was not committed within the jurisdiction as alleged, the record was held to be an estoppel, and the writ was refused (e). So the Courts have refused to inquire upon affidavit into the merits of a commitment by the House of Commons for a contempt, although the case might be one within 56

(z) 1 B. & B. 482.

(a) *Quære* if this would now be so held, and if the above cases would now be fully supported, if the facts contested were essential to jurisdiction? See *post*, p. 346.

(b) 5 B. & C. 816.

(c) *Brenan's case*, 10 Q. B. 492; *Crawford's case*, 13 *Id.* 613.

(d) *Carus Wilson's case*, 7 Q. B. 984.

(e) *Ex parte Newton*, 16 C. B. 97;

24 L. J., C. P. 148, *S. C.*; and see, to same effect, *Ex parte Smith*, 3 H. & N. 227; 27 L. J., M. C. 186. It was said by the Court in *Newton's case*, that it must be taken to have been proved at the trial that the offence was committed within the jurisdiction as alleged; and moreover, that the only remedy was to obtain the leave of the Attorney-General to issue a writ of error, *coram nobis*.

Geo. 3, c. 100 (*f*), or into the facts alleged in articles of the peace exhibited against the defendant, and upon which he was afterwards committed (*g*). On the last occasion *Littledale*, J., said, "The facts set forth in the return are, that articles of the peace were exhibited, and that upon those articles the sessions made an order and afterwards issued a warrant of commitment. These facts may be controverted."

Want or
excess of
jurisdiction.

Whether the case is one at common law or under the stat. of Car. 2, or of Geo. 3, it appears that affidavits are admissible to show *a want or excess of jurisdiction*, although they may directly contradict facts stated in the return, which, if true, would show jurisdiction and no excess of it. The rule now appears to be the same as that which is applied to proceedings by *certiorari*, where want or excess of jurisdiction may be shown by affidavit as ground for quashing a conviction or order (*h*); and it is only reasonable that a person should not be detained in custody on a conviction which would be quashed if brought before the Court in another form of proceeding. It will be observed that this privilege is not within the mischief pointed out by *Abbott*, C. J., in *Ex parte Beeching* (*i*). It does not try the guilt or innocence of the defendant on affidavit, nor does it impugn the rule, that matters on which justices acting within their jurisdiction decide shall be held to be conclusive if found by them, but on the contrary it is a consequence of the salutary maxim, that no judge by misstating facts shall give himself jurisdiction (*k*). And accordingly, in *Ex parte Baker* (*l*), where a return to a *habeas corpus* set forth a commitment under the Master and Servants Act (4 Geo. 4, c. 34), affidavits

(*f*) *R. v. Sheriff of Middlesex*, 11 A. & E. 273.

(*g*) *R. v. Dunn*, 12 A. & E. 599, 609.

(*h*) *Post*, p. 372.

(*i*) *Ante*, p. 342.

(*k*) See *R. v. Bolton*, 1 Q. B. 66; *R. v. Nunneley*, 1 El. Bl. & El. 852;

27 L. J., M. C., 260; *R. v. Huntworth*, 33 *Id.* 131.

(*l*) 2 H. & N. 219; 26 L. J., M. C. 155; *Bramwell*, B., *dubitante*; and see *Re Thompson*, 6 H. & N. 193; 30 L. J., M. C. 19; and *Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J., M. C. 152.

were used to show a former conviction for the same offence. And on a conviction under the same act, affidavits were admitted to show that there was no evidence before the justice of such facts as were essential to the exercise of his jurisdiction, *e.g.*, the contract to serve (*m*). But if there is any evidence to justify the finding, the Courts will not interfere.

The result of the decisions upon this question may be briefly stated thus:—If the fact found be one essential to jurisdiction, or on which jurisdiction depends, it may be shown that there was no evidence before the justices to warrant the finding, but if the fact found was merely a fact in the case and a part of it, jurisdiction having attached, their finding is not, as a general rule, reviewable on affidavit or in any manner, except on appeal, or on a case reserved (*n*).

The return may be amended or another substituted for it by leave of the Court or a judge (*o*). Amending
return.

If the return shows a commitment bad on the face of it, the Court will not, on the suggestion that the conviction is good, adjourn the case for the purpose of having the conviction brought up and amending the commitment by it. Nor will the Court look at the conviction unless it is before them, having been brought up by *certiorari* (*p*).

If the defect be not on the face of the commitment, but in the conviction, the defendant, besides a writ of *habeas corpus* to bring up the warrant, must in the Queen's Bench likewise sue out a *certiorari* directed to the convicting magistrate,—or to the sessions, if the conviction has been filed there,—to return the conviction into the Court above (*q*). This is also the only proceeding to be adopted When *certio-
rari* also
necessary.

(*m*) *Re Bailey and Collier*, 3 E. & B. 607; 23 L. J., M. C. 161; 18 Jur. 930.

(*n*) See *R. v. Huntsworth*, 33 L. J., M. C. 181; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C., 121; *R. v. Blackburn*, *Id.* 41; *Backhouse v. Bishopwearmouth*, 9 C. B.,

N. S. 315; 30 L. J., M. C. 118; *Re Batkin*, 25 *Id.* 126.

(*o*) Rule 242 of Crown Office Rules, 1886.

(*p*) *Ex parte Timson*, L. R. 5 Ex. 257; 39 L. J., M. C. 129.

(*q*) *Re Allison*, 10 Exch. 661; 18 Jur. 1055, S. C. If in any Court

where the defendant is not in custody, but wishes to obtain an examination of the conviction by the superior Court ; which leads us in the next place to point out succinctly the mode of obtaining and proceeding upon that writ.

Order to be drawn up and return, &c., filed.

Upon the argument before the Court on the return of a writ of *habeas corpus* the party in whose favour judgment is given is forthwith to draw up an order in accordance with the decision of the Court at the Crown Office, and the writ, and return, and affidavits are to be filed there. When the order has been made by a judge at chambers, the writ, and return, with the affidavits and a copy of the judge's order, are to be forthwith transmitted to the Crown Office to be filed (r).

Appeal.

Where a Divisional Court has granted a *habeas corpus*, and discharged the prisoner, there is no right of appeal to the Court of Appeal. Section 19 of the Judicature Act, 1873, does not apply to such a case (s).

SECT. 2.—Of the Removal of the Conviction by Certiorari.

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|---|-----|---|-----|
| 1. Where grantable | 348 | 8. When necessary to remove Conviction | 354 |
| 2. No Writ of Error on Convictions | 349 | 9. Manner of obtaining at Suit of Crown | 355 |
| 3. Of Common Right | 349 | 10. By Attorney-General ex officio | 356 |
| 4. Not taken away by Implication | 350 | 11. By Private Prosecutor | 356 |
| 5. Only by express Words | 350 | 12. At the Suit of Defendant | 357 |
| 6. Not taken away from Prosecutor | 353 | 13. Rule must state Objections | 359 |
| 7. Not taken away where there is Want of Jurisdiction or where there is Fraud | 354 | 14. Where suspended by Appeal | 359 |

Where grantable.

The *certiorari* is a writ issuing out of the Crown Office in the name of the king, or queen regnant, and tested by

other than the Queen's Bench, the conviction may be brought before the Court by affidavit.
(r) Rule 245 of Crown Office Rules, 1886.

(s) *Bell Cox v. Hakes*, 15 App. Cas. 506 ; 60 L. J., Q. B. 89 ; 63 L. T. 392 ; *R. v. Barnardo*, 24 Q. B. D. 283.

the chief justice (*t*), which the Queen's Bench Division (*u*), by virtue of its superintending authority over all Courts of inferior criminal jurisdiction in the kingdom, has power to award, for the purpose of procuring an inspection of their proceedings (*x*).

No writ of error lies on summary convictions (*y*); and therefore the writ of *certiorari* is the only mode by which a revision of these proceedings by the superior Court can be obtained. No writ of error.

It requires no special law to authorize this writ; for it is a consequence of all inferior jurisdictions of record to have their proceedings removable, for the purpose of being examined by the Queen's Bench Division (*z*). In this respect, the proceeding by *certiorari* differs from the right of *appeal*; for, whereas the latter does not exist, unless created by express provision,—the other lies of course, unless expressly taken away by statute (*a*). Of common right.

The practice of taking away the *certiorari* by statute, which Lord *Kenyon* thought had become too frequent, did not begin to prevail till the beginning of the reign of

(*t*) See Appendix, Bac. Ab. 559.

(*u*) *Certiorari* is assigned to the Queen's Bench Division of the High Court by s. 33 of the Judicature Act, 1873, as having been within the exclusive cognizance of the Court of Queen's Bench.

(*z*) The proceeding removed must be of a judicial character, and it has been held that a licence for the sale of beer granted by the solicitor of excise is not a judicial act, so as to be removable. A rule obtained on *certiorari* to quash such licence was discharged with costs, and the licence was sent back by *procedendo*; *R. v. Overseers of Salford*, 21 L. J., M. C. 223; and see *R. v. Aberdare Canal Company*, 14 Q. B. 854. Objection to an order of justices appointing overseers must be taken by appeal, not on *certiorari*; *Re Overseers of Pudding Norton*, 33 L. J., M. C. 136. And see *R. v. Poor Law Com-*

missioners, 8 A. & E. 54; *R. v. JJ. Yorksh.*, 7 Id. 583; *Ricardo v. Maidenhead Board of Health*, 2 H. & N. 257; 27 L. J., M. C. 73; *Freuen v. Hastings Board of Health*, 34 L. J., Q. B. 159. In order to maintain an action, it is not necessary to quash a warrant, issued for the apprehension of a person to answer a complaint; 11 & 12 Vict. c. 44, s. 2; *Ex parte Gill*, Q. B., November 8th, 1855, MS.

(*y*) *R. v. Leighton*, Fort. 173; *R. v. Lomas*, Comb. 297; Dalt. c. 195. See *R. v. JJ. Carnarvon*, 4 B. & Ald. 86.

(*z*) Per Holt, C. J., 1 Ld. Raym. 469; and see *R. v. The Manchester and Leeds Railway Company*, 8 A. & E. 413.

(*a*) *R. v. Hanson*, 4 B. & Ald. 521, per Abbott, C. J.; *R. v. Cashiobury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485; and see *ante*, p. 283 *et seq.*

William the Third,—not long after the introduction of appeals to the sessions,—which, we have before observed, came into general use towards the latter end of the reign of Charles the Second (*b*).

Not taken
away by
implication.

The power of granting a *certiorari* is considered as so beneficial to the subject, that it is not allowed to be abridged by any thing short of an express statutory prohibition (*c*). It is not, therefore, prevented by the words of the statute giving the right of appeal (*d*), or empowering the justices to hear and finally determine (*e*); the effect of that expression being only to make the justices' determination final as to matters of fact (*f*).

Cannot be
taken away
but by express
words.

The principle, that the *certiorari* cannot be taken away virtually or by inference, but by express words alone, is clearly evinced by the construction that has been put upon the statute 22 Car. 2, c. 1, s. 6, the first act which directed an appeal from the conviction of justices of the peace out of sessions. By that act the defendant was empowered to appeal to the judgment of the justices of the peace in their sessions, and to have his trial by a jury there; then follow these words: "and *no other Court* whatsoever shall intermeddle with any cause or causes of appeal upon this act; but they shall be *finally determined* in the quarter sessions only." Notwithstanding this clause, it has been

(*b*) The *certiorari* is taken away by the Criminal Law Consolidation Acts (24 & 25 Vict. c. 96, s. 111, and c. 97, s. 69).

(*c*) A strong instance of the maxim that the authority of the Court of Queen's Bench to issue a *certiorari* for the removal of inferior proceedings can only be retrenched by very positive and express words in an act of parliament, occurs in a case cited by Lord Holt, 1 Ld. Raym. 469, 580, upon the construction of 13 Eliz. c. 9, relating to the power of commissioners of sewers. The case is reported in Mod. 44.

(*d*) *R. v. Blathwayt*, 15 L. J., M. C. 48, 92.

(*e*) 2 Hawk. P. C. c. 27, s. 23.

(*f*) 3 Mod. 95. Where, by a local act, it was declared that no proceedings in pursuance of the act should be removed by *certiorari*, and this clause followed immediately after several others relating to summary proceedings before justices, and was succeeded by a clause giving an appeal to quarter sessions for parties aggrieved by the decision of commissioners under the act: it was held, on the construction of the act, that the clause taking away the *certiorari* applied to all proceedings under the act, whether on appeal or otherwise; *R. v. JJ. Lindsey*, 3 D. & L. 101.

resolved, that, after an appeal to the sessions, and a trial, verdict and judgment there, a *certiorari* might issue at the suit of the defendant; for, the Court said, "a *certiorari* does not go to try the merits of the question, but to see whether the limited jurisdiction has exceeded its bounds. The jurisdiction of the Queen's Bench is not taken away, unless there be express words to take it away. This is a settled point" (g).

The statute 36 Geo. 3, c. 60, s. 9, also, which gives an appeal to the sessions from the convictions of justices under that act, declares that the determination of the justices there shall be *final*. But this was held not to prevent the defendant, after an appeal tried and determined at the sessions, from suing forth a *certiorari* to remove the proceedings. Lord *Kenyon*, upon that occasion, said, that it would be against all authority to hold that the *certiorari* is virtually taken away; for that, being a beneficial writ for the subject, cannot be taken away without express words; and it was much to be lamented, in a variety of cases, that it was taken away at all (h).

Neither is a general reference to offences created by a former act, in which the *certiorari* is taken away, sufficient to take it away in the subsequent one; but, for that purpose, the prohibitory clause must be either repeated specially, or understood by necessary intendment (i).

So, where a statute takes away the *certiorari*, upon a conviction for any offence under a former act, which last-mentioned act extends the provisions of an antecedent one, *in pari materia*, but does not, in express terms, embody a section relating to the particular offence of which a party is convicted, the *certiorari* is not taken away, by inference, from the party convicted under the antecedent act (j).

But where a statute, after referring to a former one, When taken away.

(g) *R. v. Morley and others*, 2 Burr. 1041.

(h) *R. v. Jukes*, 8 T. R. 542, 544; see also *Hartley v. Hooke*, Cowp. 523; *R. v. Hubs*, 5 T. R. 542; *R. v.*

Seton, 7 T. R. 373; and *R. v. Wadley*, 4 M. & S. 508.

(i) *R. v. Terret*, 2 T. R. 734.

(j) *R. v. Kays*, 1 D. & R. 436; 1 D. & R. Mag. Ca. 114.

expressly declares, that all the powers and provisions therein contained shall be incorporated in the present act,—and one of the provisions in the former act takes away the *certiorari*,—it will be also taken away from a party convicted under the latter act (*k*). We have seen that by stat. 12 & 13 Vict. c. 45, s. 9, the decision of quarter sessions upon the hearing of any appeal as to certain matters is declared to be final, and not liable to be reviewed by *certiorari* or *mandamus*, or otherwise (*l*).

Where a statute takes away the *certiorari*, upon a summary conviction for a certain offence, but prohibits the magistrate from convicting summarily where the offence partakes of a felonious character, the Court will not grant a *certiorari*, upon a suggestion that the magistrate has exceeded his jurisdiction; unless such excess of jurisdiction appears on the face of the conviction, or the evidence shows an intention of the party to commit a felony. Thus, by the now repealed stat. 9 Geo. 4, c. 31, s. 27 (*m*), two justices might convict summarily of a common assault, and a conviction or acquittal before them barred further proceedings; but, by section 29, they were precluded from exercising this jurisdiction, if they found the assault to have been accompanied by any attempt to commit felony, and, by section 36, no such conviction could be removed by *certiorari*. Two justices convicted summarily, as of a common assault, where it appeared by the deposition, that the defendant had laid hands upon the prosecutor in an indecent manner, but without violence. A *certiorari* being moved for, on the ground that the offence, if committed, was accompanied by a felonious attempt, and therefore within section 29,—the Court of Queen's Bench refused to interfere, inasmuch as no excess of jurisdiction appeared on the face of the conviction, and the evidence (of which the magistrates were

(*k*) *R. v. The Mayor of Liverpool*,
8 D. & R. 275; 2 D. & R. Mag.
Ca. 4.

(*l*) *Ante*, p. 310.
(*m*) Sect. 42 of 24 & 25 Vict. c.
100, is now substituted.

the judges) did not clearly show an intention to *commit felony* (*n*); and where the magistrates convicted a man of an aggravated assault on a woman under the same statute (as extended by statute 16 & 17 Vict. c. 30 (*o*)), but the only evidence was that of the woman who swore to a rape, the Court of Queen's Bench refused to interfere on an application for a *habeas corpus* (*p*), and the Court of Exchequer were equally divided on the point (*q*).

But, even where a statute in express terms declares that the proceedings shall not be removed by *certiorari*, this does not prevent its issuing at the suit of the *prosecutor*; for, to restrain the prerogative of the crown in this particular, there must either be express words for that purpose, or an intention manifestly appearing upon the act, that the crown, as well as the subject, shall be prohibited from removing the proceedings (*r*). This is a reasonable construction of a provision, the object of which is only to prevent delay, which cannot be the motive of the prosecutor. And it is, in fact, beneficial to the subject that this privilege should exist on the part of the crown; for, in several instances, where the *certiorari* is taken away from the defendant, the Attorney-General has assisted defendants, where a doubtful judgment has been given below, to have their cases reconsidered by applying for the *certiorari* on the part of the crown (*s*). This privilege is extended to any private person prosecuting, though he may have become nominally the defendant in a subsequent stage of the proceedings, as if the conviction has been quashed at the sessions, with costs to be paid by the prosecutor, and he afterwards seeks to quash the order of sessions (*t*). We

(*n*) *Anon.*, 1 B. & Adol. 382.

(*o*) Repealed, so far as it relates to this subject, by 24 & 25 Vict. c. 95, which repeals the 1st sect. See 24 & 25 Vict. c. 100, s. 43.

(*p*) *Re Thompson*, 15 C. B., N. S. 288; 30 L. J., M. C. 20, n. (3).

(*q*) *Re Thompson*, 30 L. J., M. C. 19; *Wilkinson v. Dutton*, 3 B. & S.

821; 32 L. J., M. C. 152.

(*r*) *R. v. Allen*, 15 East, 333, 341, 342. See 2 Chit. Rep. 186. See sect. 53 of Pawnbrokers' Act, 1872 (35 & 36 Vict. c. 93), where the words are "not by crown or private party."

(*s*) 15 East, 337.

(*t*) Cov. Pr. 65; *R. v. Farewell*, 1 East, 305; *R. v. Berkeley*, 1 Ken.

When
required for
removal of
conviction,
&c.

Not taken
away where
there is want
of jurisdiction
or fraud.

have already considered when it is necessary to bring the conviction or order before the Court, and not to rely solely on the commitment (*u*).

So even express words taking away the *certiorari* are inapplicable where there is a want or excess of jurisdiction (*x*), which may be shown by affidavit, although the conviction may be good *ex facie* (*y*), or where the Court has been illegally constituted (*z*), or the conviction has been obtained by fraud (*a*). So the writ was allowed to issue, notwithstanding there were express words taking it away, where the magistrates convicted of an assault, although the complainant asked only for sureties to be found to keep the peace (*b*). And if an order of sessions be brought up

80; *R. v. Bodenham*, 1 Cowp. 78; *R. v. Boulbee*, 4 A. & E. 498; *R. v. Spencer*, 9 *Id.* 485.

(*u*) *Ante*, p. 338.

(*x*) *R. v. The Sheffield Railway Company*, 11 A. & E. 194; *R. v. Rose*, 1 Jur., N. S. 802; *R. v. Boulbee*, 4 A. & E. 498; 6 N. & M. 26, S. C.; *Baylis v. Strickland*, 1 M. & G. 596; *R. v. JJ. St. Alban's*, 17 Jur. 531; 22 Law J., M. C. 142, S. C.; *R. v. Berkley*, 1 Lord Ken. Rep. 99; *R. v. JJ. Derbysh.*, 2 *Id.* 209; *R. v. JJ. Somersesh.*, 5 B. & C. 816; *R. v. West Riding of Yorksh.*, 5 T. R. 629; *R. v. Fowler*, 1 A. & E. 836. The following objections have been held not to go to the jurisdiction, viz.: that the defendant was convicted on a summons giving an unreasonably short notice, and in the absence of himself or anyone on his behalf, except a solicitor authorized to apply only for an adjournment, and that the conviction took place without proof of service of the summons, the justices having jurisdiction over the subject-matter; *Ex parte Hopwood*, 15 Q. B. 121. So where costs were erroneously ordered to be paid to the clerk of commissioners, instead of to the clerk of the peace, it was held to be a defect in form only; *R. v. Binney*, 1 El. & Bl. 810; 22 L. J., M. C. 127; 17 Jur. 854, S. C. So where a magistrate

took part in the decision, having been present during only a part of the discussion; *R. v. Chester and Holyhead Railway Company*, Q. B., Jan. 14, 1856; and see Index tit. "Jurisdiction." In *R. v. Lundie*, 31 L. J., M. C. 157, 160, Crompton, J., said, "Now that justices can be compelled to grant cases for the opinion of the superior Courts, it may be doubted whether we ought to grant a *certiorari*, unless we see that they have really acted without jurisdiction;" see *R. v. Hodgson*, 12 W. R. 423. If a summons is taken out under one statute and the defendant is convicted under another, it is an excess of jurisdiction, and a *certiorari* will be granted; *R. v. Brickhall*, 33 L. J., M. C. 156; *ante*, p. 71.

(*y*) *R. v. Bolton*, 1 Q. B. 66; *Re Bailey and Collier*, 3 El. & Bl. 607; and see *ante*, p. 420; and *post*, p. 372.

(*z*) *R. v. Cheltenham Commissioners*, 1 Q. B. 467.

(*a*) *R. v. Gillyard*, 12 Q. B. 527; *Tarry v. Newman*, 15 M. & W. 653; and see further, as to the effect of fraud on judicial proceedings, *R. v. Alleyne*, 4 El. & Bl. 186; *Shedden v. Patrick*, 1 Macquean, H. of L. Cas. 535.

(*b*) *R. v. Deny and others*, 2 L. M. & P. 230; 20 L. J., M. C. 189, S. C.

to be enforced under 12 & 13 Vict. c. 45, s. 18, it may be objected to, although the *certiorari* is taken away (c).

A section in an Act of Parliament taking away the *certiorari* does not apply where there has been an absence of jurisdiction (d).

Where it is expressly taken away it has been decided that it cannot issue even to bring up to quash an order of justices in quarter sessions conditionally affirming a conviction subject to a case for the opinion of the Court (e). Now, however, a *certiorari* is not in such case required (f).

Where the application for a writ of *certiorari* rests on the ground of defective jurisdiction, matters on which the defect depends may be apparent on the face of the proceedings, or may be brought before the superior Court by affidavit, but they must be extrinsic to the adjudication impeached (g). Objections of this kind may be founded on the character and constitution of the inferior Court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior Court (h).

When a writ of *certiorari* is applied for, it is either at the instance of the crown, or of the defendant.

Manner of
obtaining at
the suit of
the crown.

First, where the application is at the suit of the crown, it is either by the Attorney-General *ex officio*, or by the private prosecutor. In both these cases alike it issues of course, and without assigning any grounds (i). Neither are the restrictions and limitations, as to the time of suing out the *certiorari*,—nor other regulations, as to notice, recognizances, and the like,—attached to an application by the crown or prosecutor (k). Besides the authority of

(c) *R. v. Hellicr*, 17 Q. B. 229 ;
R. v. Hyde, 2 El. & Bl. 952 ; 21 L.
J., M. C. 94.

(d) *Ex parte Bradlaugh*, 3 Q. B.
D. 509 ; 47 L. J., M. C. 105.

(e) *R. v. Chantrell*, L. R., 10 Q.
B. 587.

(f) 42 & 43 Vict. c. 49, s. 40.

(g) *Colonial Bank of Australasia*
v. Willan, L. R., 5 P. C. 417 ; 43

L. J., P. C. 39.

(h) *Ibid.*

(i) 2 T. R. 89 ; 2 Hawk. P. C.
c. 27, s. 27 ; *R. v. Boulbee*, 6 N. &
M. 26 ; 4 A. & E. 498, S. C.

(k) 1 East, 298, 303, n. (d) ; *R.*
v. Farewell, 2 Str. 1209 ; and S. C.
1 East, 305, from a MS. note. See
also 16 & 17 Vict. c. 30, s. 8.

practice, it has been decided by the Court, upon a review of the subject, that the general words of a statute restraining the issuing of writs of *certiorari* do not apply to prosecutors (*l*).

By Attorney-General *ex officio*.

There is this distinction between an application by the Attorney-General officially, and that by a private prosecutor, viz. that in the former, the writ is of absolute right; but, in the case of an individual prosecutor, though the writ issues of course, yet, upon cause shown, it may be suspended (*m*).

The right of the Attorney-General to have the writ as of course is not confined to cases, where it is sued out on behalf of the prosecution; but it is established practice of the Crown Office, that the Attorney-General is entitled to it absolutely in all cases. And, though a statute expressly takes away the *certiorari* from the defendant, or he cannot have it without laying a special ground by affidavit, yet the crown,—if the defendant be one of its officers, or if, for any reason, it take up his defence,—may have a *certiorari* in the name of the defendant, without laying any special ground (*n*), and without regard to any restrictions imposed in ordinary cases, as to the time of applying for it (*o*). Where this is done, the Attorney-General, by his signature, authorizes the defendant's attorney to apply to the Court, or to a judge in vacation, and a rule is thereupon drawn up of course. And no recognizance is necessary upon a writ so obtained.

Application for order to show cause.

Every application for a writ of *certiorari* at the instance of any person other than the Attorney-General on behalf

(*l*) Per Lord Kenyon, 1 East, 305.

(*m*) 2 Hawk. P. C. c. 27, s. 27, n. (2); 4 Burr. 2458.

(*n*) 1 East, 303, n. (*d*); 4 Burr. 2458; *R. v. Stannard*, 4 T. R. 161; see also *R. v. Thomas*, 4 M. & S. 442, where Lord Ellenborough, C.J., said, "I have been enquiring of the officer if the practice is as I suppose it to be, and find that the

Attorney-General has not the power of himself to issue a *certiorari*, but must make application to this Court; but, upon such his application being indorsed, it is a matter of course with the Court to grant a *certiorari*." See also 2 Chit. Rep. 136.

(*o*) *R. v. James*, M. 26 Geo. 3; 1 East, 303, n. (*d*).

of the Crown, is, during the sittings, to be made to a divisional court of the said division by motion for an order *nisi* to show cause, and in the vacation or when there is no sitting of a divisional court to a judge at chambers for a summons to show cause (*p*).

Where, from special circumstances, the Court or a judge may be of opinion that the writ should issue forthwith, the order may be made absolute, or an order be made in the first instance, either *ex parte* or otherwise, as the Court or judge may direct (*q*). Order in first instance.

When cause is shown against an order *nisi* for a *certiorari* to remove any judgment order or conviction upon which no special case has been stated, given, or made by justices of the peace for the purpose of quashing such judgment, &c., the divisional court, if it shall think fit, may make it a part of the order absolute for the *certiorari* that the judgment, &c., shall be quashed on return without further order, and in such case no such recognizance as is required by rule 36 (*post*, p. 366) shall be necessary, and a memorandum to that effect shall be endorsed by the proper officer upon the issuing of the writ of *certiorari* (*r*). Order absolute without recognizance.

No order for the issuing of a writ of *certiorari* to remove any order, conviction, or inquisition, or record, or writ of *habeas corpus ad subjiciendum* is to be granted where the validity of any warrant, commitment, order, conviction, inquisition, or record shall be questioned, unless at the time of moving a copy of any such warrant, commitment, order, conviction, inquisition, or record, verified by affidavit, be produced and handed to the officer of the Court before the motion be made, or the absence thereof accounted for to the satisfaction of the Court (*s*). Copy of order, &c, questioned to be produced in Court.

But though the *certiorari* is demandable of right by the prosecutor, it is discretionary in the Court either to At the suit of the defendant.

(*p*) Rule 28 of Crown Office Rules, 1886.

(*q*) *Ibid.*

(*r*) Rule 37 of Crown Office Rules,

1886.
(*s*) Rule 35 of Crown Office Rules, 1886.

Affidavit.

grant or refuse it at the prayer of the defendant (*t*). Although it is a discretionary writ, the Court, in exercising its discretion as to granting or not a *certiorari*, will grant it to a person aggrieved like a writ of error *ex debito justitiæ*; but to a stranger, who merely comes to inform the Court, according to its pure discretion (*u*). But even when the party aggrieved applies he may have acted so as to preclude himself from taking the objection (*v*). Some special ground must be laid before the Court by affidavit on moving for the rule (*w*); for where it was moved for, on the ground of the jurisdiction of the justices not appearing on the conviction, and there was no affidavit showing the want of jurisdiction, the application for the *certiorari* was refused (*x*). A slight ground, however, will be sufficient for applying for the writ; but there must be some (*y*). Even where the applicant is a party aggrieved, if he has by his conduct precluded himself from taking an objection, the Court will not permit him to make it (*z*).

In one case, the Court granted the writ of *certiorari* at once, where if a rule had been granted the six months from the conviction would have elapsed, so that no action could have been brought against the justices (*a*).

If a rule *nisi* only be granted in the first instance, yet the argument on such rule generally decides the case, and if it be made absolute after argument, the conviction is quashed almost as a matter of course when it is afterwards brought up on the *certiorari*.

(*t*) 2 Hawk. P. C. c. 27, s. 27; see also *R. v. JJ. Salop*, 29 L. J., M. C. 39; *R. v. Pudding Norton*, 33 *Id.* 136.

(*u*) *R. v. JJ. of Surrey*, L. R., 5 Q. B. 466; 39 L. J., M. C. 145; *Arthur v. Commissioners of Sewers*, 8 Mod. 331.

(*v*) *R. v. South Holland Drainage Commissioners*, 8 A. & E. 429; *R. v. JJ. Yorksh.*, 3 N. & M. 93; *R. v. Newborough*, L. R., 4 Q. B. 585; 38 L. J., M. C. 129.

(*w*) 2 T. R. 90.

(*x*) *R. v. Long*, 1 M. & R. 139; 1 M. & R. Mag. Ca. 52; and see *R. v. Bolton*, 1 Q. B. 66.

(*y*) Per Buller, J., 2 T. R. 90. The rule is said to have obtained ever since the time of Charles II., *Id.*; and see *R. v. Abbott*, Doug. 553, n.

(*z*) *R. v. JJ. Surrey*, *supra*; *R. v. Sheward*, 9 Q. B. D. 741.

(*a*) *Ex parte Houseman*, Q. B. Jan. 15, 1856.

The rule for the *certiorari* must specify the omission or mistake objected to in the conviction, order or judgment which it is sought to remove (*b*). Rule must state objections.

By a rule of Court, Pasc. 1 Ann. B. R. (*c*), no *certiorari* shall be granted to remove orders of justices from which the law has given an appeal to the sessions, before the matter be determined on the appeal, or the time for appealing be expired; because it hinders the privilege of appealing (*d*). Where suspended by appeal.

By the interpretation put upon this rule, however, if a right of appeal to the sessions is given to the defendant alone, to be brought within a certain time, he may waive his right, and apply for a *certiorari* before the time for appealing is expired (*e*), unless expressly restricted by the statute (*f*); and the rule applies only where the party in whose favour the order was made seeks to bring it up by *certiorari*, which would prevent the privilege of appealing (*g*).

The only cases where the issuing of the *certiorari* is suspended by the privilege of appeal, are those in which both parties have that privilege; and then only if a certain time is fixed for bringing the appeal (*h*); for, if only the party applying for the *certiorari* has the right of appealing, he may waive it; and where both are entitled to it, yet if no time be fixed for bringing the appeal, it is no objection to the writ of *certiorari* issuing; for, if it were,

(*b*) 12 & 13 Vict. c. 45, s. 7. See *R. v. Purdey*, 34 L. J., M. C. 4.

(*c*) 1 Salk. 146.

(*d*) This rule must have been taken advantage of, upon the motion to file the order, when such motion was made. Per Holt, C. J., 1 Salk. 136. No motion is now made to file the order.

(*e*) *R. v. Harman*, Andr. 343.

(*f*) An instance of such partial restriction of the *certiorari*, though not usual, is found in the statute 12 Geo. 2, c. 28, ss. 5, 6, against excessive gaming,—which, after giv-

ing the party grieved an appeal to the sessions, enacts (sect. 6) that “no conviction or judgment shall be removable into any Court of Record at *Westminster* by *certiorari*, or any other writ or process, until such order or other proceeding shall have been first removed to, and judgment and determination made thereon by, the Court of Quarter Sessions.”

(*g*) *R. v. Willats*, 7 Q. B. 516; *R. v. Blathwayt*, 3 D. & R. 542.

(*h*) Andr. 343.

the writ might never issue at all; and the rule of Court above mentioned is to be understood in that sense (i).

Effect on
certiorari
of an appeal
depending.

Where a person had been committed by two justices to the sessions under the Vagrant Act, against which commitment he had appealed, and while that appeal was depending a *certiorari* had been granted to remove the proceedings; afterwards a rule was obtained to show cause why it should not be quashed. The Court were all of opinion, that no *certiorari* could issue then, and, therefore, that it must be quashed; for the magistrate had committed to the sessions, and the vagrant had appealed; so that both parties had agreed, that there should be an appeal to the sessions; and therefore the *certiorari* ought not to issue till the sessions had determined the case (k).

After case
granted.

Where, however, the objection taken to a conviction goes to the jurisdiction of the justices, a *certiorari* may issue, even although the party applying for it has induced the magistrates to state a case for the opinion of a superior Court, under 20 & 21 Vict. c. 43, and although such case is still pending before the Court (l).

Refused.

But, even where there is no objection to the *certiorari* issuing before the time for appealing has expired, yet the Court, in the exercise of its discretion, will refuse to grant it, if, upon the affidavits in support of the application, it appears that the ground alleged for it is more properly the subject of appeal (m); or, if the defendant, before raising

(i) *Id. ib.* : and see 2 Str. 991.

(k) *R. v. Sparrow and another*, 2 T. R. 196, n. (a). The practice is different, on an application for a *certiorari* to remove an indictment from the sessions; in which case the application must be made before the trial of the indictment at the sessions; *R. v. Inhabitants of Pen-negoes and Machynlleth*, 1 B. & C. 142; 1 D. & R. Mag. Ca. 243; and see, as to the removal of indictments by *certiorari*, 16 & 17 Vict. c. 30, ss. 4—8.

(l) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98; *R. v.*

JJ. Montgomerysh., 15 L. T. 290; and on *R. v. Sparrow* being cited, Cockburn, C. J., said, "The question whether the justices had jurisdiction is preliminary to any question on the merits."

(m) Per Lord Mansfield, *R. v. Whitbread*, Dong. 550. In *R. v. Eaton*, 2 T. R. 90, where the Court at first refused to grant a *certiorari* without some cause shown, it is said that the defendant's counsel then offered an affidavit of the merits, which being read, the *certiorari* was granted. This expression, however, it is presumed, must apply to such

the objection to the jurisdiction of the justices, endeavoured to obtain their decision on the merits(*n*); or, if the objection is one which ought to have been taken at the hearing, instead of being reserved as a ground for quashing the conviction or order after it has been made, *e.g.*, the objection of *res judicata* (*o*).

No appeal lies from the decision of the Queen's Bench Appeal Division discharging or making absolute a rule for a *certiorari* to bring up a summary conviction (*p*).

SECT. 3.—*Of the Time of Issuing the Certiorari, and of the Notice, and Recognizance.*

| | | | | |
|------------------------------|-----|--|---------------------|-----|
| 1. Time of issuing | 361 | | 2. Notice | 362 |
| 3. Recognizance | 365 | | | |

There are several statutory regulations concerning the issuing of the writ of *certiorari*, in regard to time, notice, and security for costs.

With regard to the *time*, and also the *notice* necessary, it is enacted, by Rule 33 of the Crown Office Rules, 1886, that "No writ of *certiorari* shall be granted, issued, or allowed to remove any judgment, order, conviction or other proceeding had or made by or before any justice or justices of the peace of any county, city, borough, town corporate, or liberty, or the respective general or quarter sessions

Regulation as to time of issuing.

facts as appeared upon the face of the conviction; otherwise, they could not furnish a reason for granting the *certiorari*, as they could not be taken notice of upon the conviction being brought up. See *R. v. Hunt*, 2 Chit. Rep. 130.

(*n*) *R. v. JJ. Salop*, 2 El. & El. 386; 29 L. J., M. C. 39.

(*o*) *R. v. Harrington*, 12 W. R. 420; 3 N. R. 468; and *ante*, p. 154, *et seq.*

(*p*) 36 & 37 Vict. c. 66, s. 47. Where the matter is criminal there is by virtue of s. 47 of the Judi-

cature Act, 1873, no appeal in *certiorari* from the Queen's Bench Division; but where the matter is not criminal, there is by virtue of s. 19 of the Judicature Act, 1873, an appeal to the Court of Appeal, and by virtue of s. 3 of the Appellate Jurisdiction Act, 1876, a further appeal to the House of Lords. *Blake v. Beech*, 2 Ex. D. (App.) 335; *R. v. Fletcher*, 2 Q. B. D. 43; 46 L. J., M. C. 4; 35 L. T. 538; *Ex parte Whitchurch*, 50 L. J., M. C. 99; *R. v. Rudge*, 1 Q. B. D. 459.

thereof, unless such writ of *certiorari* be applied for within
 In six months. six calendar months next after such judgment, &c., shall
 be so had or made, and unless it be proved by affidavit
 Notice. that the party suing forth the same has given six days' notice thereof in writing to the justice or justices, or to two of them, if more than one, by and before whom such judgment, &c., shall be so had or made, in order that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the granting, issuing, or allowing such writ of *certiorari* (q). This rule only applies to proceedings before justices; and there is no general rule of practice which requires applications for a *certiorari* to be made within six months of the making of the order, &c. sought to be quashed (r).

The six calendar months are to be computed from the date of the conviction, if there has been no appeal (s). But if an appeal has been heard, then it is sufficient, if the *certiorari* is moved for within six calendar months after the order of sessions confirming the conviction; for, as was observed by *Patteson, J.*, in *R. v. Justices of Middlesex* (t), "if this were otherwise, the party aggrieved would not have his two remedies; for if he were obliged to remove the conviction within six months, he would often lose the opportunity of an appeal on the merits." Where a special case has been granted on an order, the time runs from the date of the order, and not from the settlement of the special case (u). The application for the writ should be made with reasonable promptitude, although the Court will not necessarily require it to be made within the term following the sessions (x).

(q) This is a substantial re-enactment of 13 Geo. 2, c. 18, s. 5.

(r) *R. v. Sheffield (Mayor of)*, L. R., 6 Q. B. 54.

s) *R. v. Boughey*, 4 T. R. 281; see *R. v. Whitechapel*, 2 Dowl., N. S. 964; *Re Llanbelig*, 15 L. J., M. C. 92; *R. v. Bloxam*, 1 A. & E. 386

(t) *R. v. JJ. Middlesex*, 5 A. & E. 626; and see *R. v. Kaye*, 1 D. & R. 436; *R. v. JJ. Sussex*, 1 M. & S. 631, 734; *R. v. JJ. Hertfordsh.*, 2 D. & L. 952.

(u) *Elliott v. Thompson*, 33 L. T. 339; 24 W. R. 56.

(x) *R. v. JJ. Brecknock*, 42 L. J., M. C. 135.

The application may be made on the last day of the six months, and where the applicant had left the affidavits with the judge's clerk on the last day but one of the six months, and had done all he could for the purpose of making the application on the next day, but on account of the judge not attending chambers, the application was not heard until after the six months had expired, the writ was allowed to issue (*y*).

The *notice* must be given to the magistrates six days previous to the application for the rule to show cause; and the six days are to be reckoned one day inclusively and the other exclusively (*z*). The notice of such motion must be given to the justices, notwithstanding the order of sessions is made, subject to the opinion of the Queen's Bench Division on a case to be stated, and the case is afterwards stated and settled by the justices at sessions (*a*). The service of the rule to show cause, though more than six days be given upon it, is not a sufficient compliance with the act (*b*). The notice may be of intention to move for a *certiorari* "in six days from the giving of this notice, or as soon after as counsel can be heard" (*c*). But where a notice was given, that the motion would be made "on the first day of term, or as soon after as I can be heard,"—the notice was held irregular, where it was served only on the first day of the term, although not in fact moved for until after the expiration of the six days (*d*).

Where the *certiorari* is to remove an order of sessions, the notice must be served on *two* of the justices *present at the sessions*, by and before whom the conviction was made. For where a notice was served on one justice

(*y*) *R. v. Allen and others*, 4 B. & S. 915; 33 L. J., M. C. 98.

(*z*) *R. v. Goodenough*, 2 A. & E. 463. The six days' notice to the justices required by rule 33 of the Crown Office Rules, 1886, as a preliminary to the grant of a writ of *certiorari* must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute. *Ex*

parte Roberts, 50 J. P. 567.

(*a*) *R. v. JJ. Sussex*, 1 M. & S. 631, 734.

(*b*) *R. v. JJ. Glamorgansh.*, 5 T. R. 279.

(*c*) *R. v. Rose and another*, 3 D. & L. 359.

(*d*) *In re Flounders*, 4 B. & Ad. 865; 3 Nev. & M. 592.

present at the sessions, and on another not present, the service was held bad (*e*).

It is not sufficient to state in the affidavit of service that the notice was served on two of the justices present at the sessions, but it should be alleged that it was served upon two of the justices present at the hearing by and before whom the conviction was made (*f*), and it seems that no presumption arises on this head from their names appearing in the caption of the order which it is sought to remove (*g*). A defect in this respect is ground for quashing the writ (*h*), and if the application fails from defective affidavits, it cannot, in general, be renewed (*i*). Affidavits may be used to show that one of the justices described in the affidavit for the *certiorari* as having been present, took no part in the proceedings (*k*). The want of, or any defect in, such previous notice is, therefore, a good cause to be shown against making the rule absolute (*l*); or even if the rule had been made absolute, and the writ issued, the Court would supersede it, on the ground that no notice was given previous to the moving for the rule *nisi* (*m*).

The *certiorari* can only be issued at the instance of the party giving notice to the justices (*n*). The notice must therefore state the name of the party intending to apply for the writ (*o*), and should state who that party

(*e*) *R. v. Rattislaw*, 5 Dowl. 539.

(*f*) *R. v. Cartworth*, 5 Q. B. 201; and see *R. v. JJ. Suffolk*, 21 L. J., M. C. 169; *R. v. Darton*, 2 D. & L. 498.

(*g*) *R. v. Colchester*, 20 L. J., M. C. 203; and see *R. v. JJ. Shrewsbury*, 9 Dowl. 501; *R. v. JJ. Wilts.*, *Id.* 524. But see *R. v. Sevenoaks*, 7 Q. B. 136.

(*h*) *R. v. Cartworth*, *supra*. As to time of making application to quash the writ on this ground, see *R. v. Basingstoke*, 6 D. & L. 303; *R. v. Darton*, 2 *Id.* 492; *R. v. Gilbertide*, 5 Q. B. 207; *R. v. Sevenoaks*, 7 *Id.* 136; *R. v. Rattislaw*, 5 Dowl. 539. Enlarging the rule *nisi* by consent will not cure objec-

tion to the notice; *R. v. JJ. Shrewsbury*, 11 A. & E. 159; 9 Dowl. 501; *S. C.*

(*i*) *R. v. Manchester Railway Company*, 8 A. & E. 413.

(*k*) *R. v. JJ. Herefordsh.*, 14 L. J., M. C. 44, n.

(*l*) *R. v. JJ. Glamorgansh.*, 5 T. R. 279.

(*m*) *R. v. Nichols*, 5 T. R. 281; *R. v. Rattislaw*, 5 Dowl. P. C. 539.

(*n*) *R. v. JJ. Kent*, 3 B. & Ad. 250.

(*o*) *R. v. JJ. Lancash.*, 4 B. & Ald. 289, where the Court said, "The notice should be given by the party suing out the writ, and that circumstance should appear upon the face of the notice itself;

is (*p*); and on motion for the writ, the Court must be satisfied on the affidavits that the party so named is the one by whom, or on whose behalf, the notice was given and the application is made; the justices must also be identified with those who were served (*q*). And if there are more than one party applying for it, the notice must be given by all, and, therefore, where a notice was signed by only one churchwarden, although it was stated to be "on behalf of the churchwardens and overseers of E.," it was held to be not a sufficient notice by the "party or parties suing forth" the writ, within the statute of 13 Geo. 2, c. 18, s. 5 (*r*). But in order to obtain a *certiorari* on behalf of a parish, to remove an order of sessions, a notice to the justices signed by the attorney for the parish, stating the intention of the parish to apply for such writ, has been held sufficient (*s*).

These restrictions, however, it is to be remembered, do not attach upon applications on behalf of prosecutors, nor upon those made by the Attorney-General officially on account of a defendant (*t*).

Formerly it was not competent for a party to move in person for a writ of *certiorari*, but of late years the Divisional Court has, in cases of convictions, in more than one instance, allowed a party interested so to move (*u*). Application made by whom.

A further condition to be observed, before a *certiorari* Recognizance. can be obtained by the defendant, is that of giving security for costs, &c. (*x*). "No writ of *certiorari* shall be allowed

for the object of it, stated by the statute, is to enable the justices to show cause against the granting the *certiorari*; and they may show for cause, that the party suing out the writ was a stranger to the county, and not interested in the order. The justices, therefore, ought to have their attention called to the name of the party by the notice itself." See also *R. v. How and others*, 11 A. & E. 159.

(*p*) Cov. Pr. 70.

(*q*) *R. v. JJ. Shrewsbury*, 11 A.

& E. 159; 9 Dowl. 501, S. C.; and see *R. v. JJ. Wiltsh.*, 9 Dowl. 524; *R. v. JJ. Lancash.*, 11 A. & E. 144.

(*r*) *R. v. JJ. Cambridgesh.*, 3 B. & Ad. 887; *R. v. JJ. Kent*, 40 L. J., M. C. 76.

(*s*) *R. v. Inhabitants of Abergele*, 5 A. & E. 795; 1 Nev. & P. 285; 1 Nev. & P. Mag. Ca. 66.

(*t*) *Ante*, p. 356, *et seq.*

(*u*) *Ex parte Bradlaugh*, 3 Q. B. D. 509; 47 L. J., M. C. 105.

(*x*) See the form of a recognizance, in the Appendix. See *R. v.*

to remove any judgment, order, or conviction given or made by justices, unless the party (other than the Attorney-General acting on behalf of the Crown) prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the county or place or at their general or quarter sessions, where such judgment or order shall have been given or made, or before any judge of the high court in the sum of 50*l.*, with condition to prosecute the same at his own costs and charges with effect, without any wilful or affected delay, and to pay the party in whose favour or for whose benefit such judgment, order, or conviction shall have been given or made, within one month after the said judgment, &c., shall be confirmed, his full costs and charges, to be taxed according to the course of the Court where such judgment, &c., shall be confirmed, and in case the party prosecuting such *certiorari* shall not enter such recognizance, or shall not perform the conditions aforesaid, it shall be lawful for the said justices to proceed and make such further order for the benefit of the party for whom such judgment shall be given, in such manner as if no *certiorari* had been granted (*y*).

Certifying
recognizances.

All recognizances to be entered into for the allowance of any writ of *certiorari* for the removal of any order, conviction, inquisition, or other proceeding removed thereby, are to be certified into the Queen's Bench Division with the writ of *certiorari* or order of removal (*z*).

Harrison, Id. 571, where a person who had obtained a rule absolute for a *certiorari* was obliged to go to sea upon a voyage which detained him from England for a year, and was thereby unable to enter into the recognizance required by 5 Geo. 2, c. 19, s. 2, and so *certiorari*, which had issued, remained

unreturned, Court directed the return to be enlarged for a year; *Ex parte Tomlinson*, 20 L. T. 324.

(*y*) Rule 36 of Crown Office Rules, 1886. This is a substantial re-enactment of 5 Geo. 2, c. 19, s. 2.

(*z*) Rule 32 of Crown Office Rules, 1886.

SECT. 4.—Of the Direction, Effect, and Return of the Certiorari.

| | |
|-------------------------------------|---|
| 1. Direction of Writ . . . 367 | 6. Practice as to drawing up Conviction . . . 369 |
| 2. Delivery . . . 367 | 7. Examinations, &c. need not be returned . . . 370 |
| 3. Effect of . . . 367 | 8. Impertinent Matter . . . 370 |
| 4. No stay of Execution begun . 368 | 9. Return quashed . . . 370 |
| 5. Return how enforced . . . 369 | 10. Variance . . . 371 |
| How made . . . 369 | 11. Procedendo . . . 371 |
| Under Seal . . . 369 | 12. Bail . . . 371 |
| Filing . . . 369 | |

The writ, which may issue upon an *ex parte* application (a), is directed to the justices by whom the conviction was made ; or, if it has been returned to the sessions, it is directed generally to the “justices assigned to keep the peace in and for the county of,” &c.

Direction
the writ.

According to Mr. Serjeant *Hawkins*, if a person who ought to certify a record die, having such record in his custody, a *certiorari* may be directed to his executor or administrator to certify it (b).

It seems that upon a conviction which ought to be returned to the sessions, the *certiorari* may be directed to, and the return made by, the sessions ; for the justices out of sessions are supposed to return their proceedings there (c).

The writ is of no effect, unless delivered before the Delivery. time for its return has expired (d).

The writ of *certiorari*, from the time of its delivery, Effect of. supersedes the authority of the magistrates below ; and all subsequent proceedings are void (e), besides being a contempt of the Queen’s Bench Division, for which the magistrate is liable to attachment and fine (f). Its having that operation, however, is only on condition that the proper

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|--|---|
| (a) See <i>Symonds v. Dimsdale</i> , 2 Exch. 533. | (d) 2 Hawk. P. C. c. 27, s. 64. |
| (b) 2 Hawk. P. C. c. 27, s. 41, 8th ed., by Curwood. | (e) 1 Salk. 148 ; 2 Hawk. P. C. c. 27, s. 64. |
| (c) <i>Semb.</i> 1 Str. 470 ; <i>ante</i> , p. 308. | (f) 1 Mod. 44 ; 1 Ld. Raym. 469. |

recognizance has been entered into (*g*): for, if the conditions required have not been observed, the justices below may proceed; and till this has been done, the Court will not compel them to return the writ (*h*). The delivery, however, of a *certiorari*, with these necessary conditions duly performed, operates as a *supersedeas* for ever, though nothing further be done upon it (*i*).

It is the duty of the magistrate, therefore, upon receiving the *certiorari*, to yield obedience to it, by returning all the proceedings comprehended in its mandate, not only previous to the date of the *teste*, but such also, if any, as originated after the *teste* (*k*).

The magistrate may now make his answer by affidavit, for it is provided by 35 & 36 Vict. c. 26, s. 2, that whenever the decision of a magistrate is called in question in any superior court of common law, by a rule or other process issued on an *ex parte* application, the magistrate may make and file an affidavit setting forth the grounds of the decision and any facts bearing on the question (*l*).

But though the magistrate has no further power, after the delivery of the writ regularly sued out, to do any fresh act, yet it has been said, that if a *certiorari* come after an adjudication made, but before the convicting justices have agreed upon the amount of the fine, it is no contempt in them to fix the amount, in order to return their judgment complete (*m*).

No stay of
execution
begun.

If, before any *certiorari* awarded, a warrant of distress has been made, and delivered to the constable who has distrained the goods, he may proceed to sell; for the *certiorari*, under such circumstances, has no operation upon the execution, which was begun before it issued: nor has the Queen's Bench Division any power over the warrant

(*g*) 2 Hawk. P. C. c. 27, s. 64. Salk. 149; 1 East, 298.

(*h*) *R. v. Dunn*, 8 T. R. 218.

(*i*) *Semb.* 3 Dy. 244, pl. 63; 2 Hawk. P. C. c. 27, s. 64.

(*k*) 2 Ld. Raym. 836, 1305; 1

(*l*) See *post*, Appendix.

(*m*) *R. v. Elwell*, 2 Ld. Raym. 1514; 2 Str. 795; but see *contra*, Yelv. 32 Dalt. c. 195.

so previously granted, so as to make a rule upon the constable to return it (*n*).

If the person, to whom the *certiorari* is directed, neglects to return it, an *alias*, and after that a *pluries*, lies; and lastly, an attachment (*o*). But in practice the mode is, to take out a rule upon the magistrate, or person whose duty it is to return the writ. The party, to whom it is directed, is thereby ordered to return the writ within so many days after notice of that rule. Return,
how enforced.

The manner of making the return is as follows: viz. on the back of the *certiorari* should be inscribed, "The execution of this writ appears by the schedules hereunto annexed. The Answer of A.B., Esquire, one of the keepers of the peace and justices within mentioned." This is signed by the justice, or person making the return (*p*). Making the
return.

The return must certify the record itself, and will be bad if it only certifies the tenor thereof (*q*), or even a copy of the record (*r*).

The return should regularly be under seal (*s*), as the writ enjoins, and should add the description of the justices; otherwise it will be sent back to be amended (*t*). The schedules consist of the Orders and other documents to be returned (*u*). Under seal.

The instruments to be returned are inclosed with the writ and certificate, and sent up together, to be remitted to the Crown Office, where they are filed. Filing.

We have already seen that it is not usual for the convicting justices to draw up a formal conviction, in the first instance, in every case in which a penalty is inflicted; but to make minutes of the proceedings (without attending to Practice as to
drawing up
conviction.

(*n*) *R. v. Nash*, 2 Ld. Raym. 900;
1 Salk. 147.

(*o*) Dalt. 195; Crompt. 116.

(*p*) *Post*, p. 579.

(*q*) 1 Salk. 147.

(*r*) *Askew v. Hayton*, 1 Dowl.
510.

(*s*) 2 Hawk. P. C. c. 27, s. 70.
For Forms of returns, see Appendix,
tit. "Certiorari."

(*t*) *R. v. Kenyon*, 6 B. & C.
640.

(*u*) *Post*, p. 579.

the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction, to be returned to a writ of *certiorari* (x).

Examina-
tions, &c.
need not be
returned.

It is sufficient to return the conviction in due form, without returning also the examinations and affidavits taken in the proceeding (y); but the information or complaint should be returned with the conviction or order (z).

Impertinent
matter.

All matters introduced into the return by way of explanation or otherwise, except those expressly ordered to be certified, are impertinent, and will be altogether disregarded by the Court (a); and can neither affect the conviction, nor supply any defect in it.

Return
quashed.

If the *tenor* only of the record be returned, instead of the record itself (b); or if, instead of sending up a formal conviction, the affidavits only, and warrant to distrain, be returned (c), the return is imperfect. In such case, the return is quashed, and a new *certiorari* granted upon motion (d).

And in one case, where the inferior Court returned only a copy of the record, the Court not only quashed the writ and return, but ordered a *procedendo* (e).

Mistake in
justice's order.

No objection on account of any omission or mistake in any judgment or order of any justice of the peace, court of summary jurisdiction, or court of general or quarter sessions, brought up upon a return to a writ of *certiorari* and filed at the Crown Office department, is to be allowed.

(x) *Ante*, p. 231.

(y) *Anon.*, Loft, 348; *R. v. Abergele*, 8 A. & E. 394. And it should seem that the reason for this is, that the Court will not take notice of any formal defect in the proceedings, unless it appears on the face of the conviction itself; *R. v. Liston*, 5 T. R. 338; *R. v. Cashibury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485.

(z) *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81.

(a) 2 Hawk. P. C. c. 27, s. 75.

(b) 1 Salk. 147; *Palmer v. Fersythe*, 6 D. & R. 497; 4 B. & C. 401.

(c) *R. v. Levermore*, 1 Salk. 146.

(d) 3 Salk. 80.

(e) *Askeo v. Hayton*, 1 Dowl. 510.

unless such omission or mistake shall have been specified in the order for issuing such *certiorari* (*f*).

As a writ of error can remove no record, which materially varies from the description of that set forth in the writ, so neither can a *certiorari*. Thus, a *certiorari* was to remove an order concerning *foreign* salt; the order returned appeared to be concerning *salt* only; the return was held bad (*g*). So, if the record of a conviction returned vary from the description in the writ, as to the names of the justices by whom it is said to be made (*h*), or in the name of the party convicted (*i*), it is a bad return.

Variance between the writ and return.

Likewise, if the mandate of the writ be to remove all proceedings against A. and B., it will not remove a proceeding against A. alone (*k*). But, conversely, a writ to remove all proceedings against A. will remove those in which A. is included jointly with others (*l*).

When the record returned is for any of the foregoing reasons not well removed, nothing is before the Court upon which it can proceed (*m*). In that case, therefore, the Court will quash the return, and award a new writ (*n*), or order a *procedendo* (*o*).

Quashing the return.

If the defendant, at the time of removing the conviction, be under commitment, the Court, upon the return being filed, may bail him till the validity of the conviction be determined. This was done in the following case:—The defendant was convicted of keeping an ale-house without licence, and was thereupon committed for a month, as the act directs. After he had lain a fortnight in prison, he brought a *certiorari*, and, upon the return

Bail.

(*f*) Rule 40 of Crown Office Rules, 1886.

(*g*) 1 Salk. 145; 3 Salk. 79.

(*h*) 1 Sid. 448; 1 Keb. 102, 129, 282.

(*i*) 2 Hawk. P. C. c. 27, s. 86; 2 Salk. 452.

(*k*) *R. v. Baines*, 2 Ld. Raym. 1199; 1 Salk. 157.

(*l*) 2 Hawk. P. C. c. 27, s. 85. It is so laid down in regard to indictments.

(*m*) *Anon.*, 3 Salk. 80.

(*n*) *R. v. Baines*, 2 Ld. Raym. 1203; 3 Salk. 79, 80; *Ashley's case*, 2 Salk. 479.

(*o*) *Askew v. Hayton*, 1 Dowl. 510.

of it, he was admitted to bail; the Court being of opinion, that if the conviction was confirmed, they could commit him in execution for the residue of the time (p).

SECT. 5.—*Proceedings in the Queen's Bench Division after Return of the Conviction.*

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|---|-----|--|-----|
| 1. <i>No plea to the Conviction</i> | 372 | 6. <i>Argument.</i> | 378 |
| 2. <i>Affidavits</i> | 372 | 7. <i>Quashing Order, &c. in part.</i> | 379 |
| 3. <i>Reserving Special Case</i> | 377 | 8. <i>Confirmed, &c. after Death</i> | 379 |
| 4. <i>False Return</i> | 378 | 9. <i>Costs on Affirmance</i> | 379 |
| 5. <i>Filing Return</i> | 378 | 10. <i>Proceedings on Recognizance</i> | 380 |
| | | 11. <i>Attachment for Costs.</i> | 380 |

We are, in the next place, to consider the proceedings in the Court above upon the conviction, after it has been properly removed into that Court.

No plea to the conviction.

It seems to have been thought regular, at one time, to allow the defendant to plead to the conviction matter impeaching the jurisdiction of the magistrate (q).

Affidavits, how far admissible.

According to modern usage, no plea is admissible to a conviction, nor does the Court, in examining the conviction, take notice of anything but what appears upon the face of it. But *affidavits may be used to show a want of jurisdiction*, although they contradict for this purpose the finding of the justices. We have already considered this question to some extent in the preceding chapter (r);

(p) *R. v. Reader*, 1 Str. 531. This course was adopted in *Re Hammond*, 9 Q. B. 92; 2 New Sess. Cas. 397, S. C.; *Re Turner*, 9 Q. B. 80; 15 L. J., M. C. 140, S. C.; *Re Aston*, 19 L. J., M. C. 236; 1 L. M. & P. 491, S. C.; *Re Lord*, 12 Q. B. 757; 4 D. & L. 405; 16 L. J., M. C. 15, S. C., where see form of the rule. In *Re Collier and Bailey*, 3 El. & Bl. 607, a rule *nisi* was granted for the recommittal of the defendant who had been so bailed, or for the estreating of his recognizances, the conviction having

been confirmed; and see *Dickenson v. Brown*, Peak. N. P. C. 234, and *Re Blues*, 5 El. & Bl. 291; 1 Jur., N. S. 543; 24 L. J., M. C. 138, S. C.; and *post*, Sect. V. It has however, been doubted whether the Court has power to recommit the defendant under such circumstances.
(q) *Gardner's case*, Cro. Eliz. 822; 5 Co. 72, by the name of *St. John's case*; see *De Vine's case*, O. Bridgm. 288; *ante*, p. 341.
(r) *Ante*, p. 354.

but it is one of sufficient importance to deserve further notice here in connection with the writ of *certiorari*. The leading case upon the subject is *The Queen v. Bolton* (s), in which the question was how far affidavits were admissible to review the finding of justices in an order brought up by *certiorari*; and it was held that, although affidavits will be received to show that the justices had no authority to enter upon the enquiry, as for instance, that the question brought before them by the complaint was not one to which their jurisdiction extended, yet the Court will not hear affidavits impeaching their decision or conclusion on the facts or reviewing their judgment on the evidence. Lord *Denman*, C. J., delivering the judgment of the Court in that case, said—"It is contended that affidavits are receivable for the purpose of showing that they acted without jurisdiction; and this is no doubt true, taken literally: the magistrates cannot, as it is often said, give themselves jurisdiction merely by their own affirmation of it (t). But it is obvious that this may have two senses: in the one it is true; in the other, on sound principle and on the best considered authority, it will be found untrue. Where the charge laid before the magistrate, as stated in the information, does not amount in law to the offence over which the statute gives him jurisdiction, his finding the

(s) 1 Q. B. 66; and see *R. v. Preston*, 12 *Id.* 823; *R. v. JJ. Chesh.*, 8 A. & E. 398; *R. v. JJ. Cambridgesh.*, 4 *Id.* 111; *Re Batkin*, 25 L. J., M. C. 126; *Re Thompson*, 30 L. J., M. C. 19, 23, 27, 28, 30; *Backhouse v. Bishopwearmouth*, 9 C. B., N. S. 315; 30 L. J., M. C. 118; *Wilkinson v. Dutton*, 3 B. & S. 281; 32 L. J., M. C. 152; *R. v. Blackburn*, *Id.* 41; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; *Keane v. Reynolds*, 2 E. & B. 748; *R. v. Dickinson*, 7 El. & Bl. 831; 3 Jur., N. S. 1076; *Thompson v. Ingham*, 14 Q. B. 710, 718; *Parker v. Nottingham Railway Company*, 33 L. J., C. P. 193, 194. See *ante*, p. 346, as to the admissi-

bility of affidavits on return to a writ of *habeas corpus*; and p. 354 as to the want of jurisdiction, which enables a party to remove proceedings by *certiorari*, although it is taken away by express words. An indictment may be quashed, where it has been found by a grand jury without jurisdiction, and the defect may be shown by affidavit; *R. v. Heane*, 4 B. & S. 947; 33 L. J., M. C. 115; *Knowlden v. The Queen*, 33 L. J., M. C. 219; *R. v. Williams*, 1 Burr. 386; *Bennett v. Benham*, 33 L. J., C. P. 153.

(t) See *R. v. Huntworth*, 33 L. J., M. C. 131; *R. v. Nanneley*, El. Bl. & El. 852; 27 L. J., M. C. 260; and *ante*, p. 152.

party guilty by his conviction in the very terms of the statute would not avail to give him jurisdiction; the conviction would be bad on the face of the proceedings, all being returned before us. Or if the charge being really insufficient, he had misstated it in drawing up the proceedings so that they would appear to be regular, it would be clearly competent to the defendant to show to us by affidavits what the real charge was, and that appearing to have been insufficient, we should quash the conviction. In both these cases, a charge has been presented to the magistrate over which he had no jurisdiction; he had no right to entertain the inquiry or commence an inquiry into the merits; and his proceeding to a conclusion will not give him jurisdiction. But, as in this latter case, we cannot get at the want of jurisdiction but by affidavits, of necessity we must receive them. It will be observed, however, that here we receive them, not to show that the magistrate has come to a wrong conclusion, but that he never ought to have begun the inquiry. In this sense, therefore, and for this purpose, it is true, that affidavits are receivable." In *Thompson v. Ingham* (u), Patteson, J., stated the effect of the decision in *R. v. Bolton* to be that "where the charge is such as, if true, is within the magistrate's jurisdiction, the finding of the facts afterwards by the magistrate is conclusive, but where the charge is not such as, if true, would be within the magistrate's jurisdiction, no finding of facts can alter it." And, in *Barber v. The Nottingham Railway Company* (x), on *The Queen v. Bolton* being cited, Erle, C. J., said "The effect of all the decisions upon that class of cases is contained in *Thompson v. Ingham*, that where the charge is such that, if it were true, it would give the magistrate jurisdiction, his decision is final."

(u) 14 Q. B. 710, 718.

(x) 88 L. J., C. P. 193, 194.
The opinions of these learned judges refer to the question raised in *R. v. Bolton*, viz. the power

in the justices to enter upon the inquiry, and do not militate against the rule that justices cannot by misstatement give themselves jurisdiction.

In a subsequent case (y), Lord *Denman*, C.J., delivering the judgment of the Court, said—"It is clear that the decision of a tribunal, lawfully constituted, upon a question properly brought before it respecting a matter within its jurisdiction, is not open to review on *certiorari* (*R. v. Bolton*); but the decision of persons assuming to be a tribunal, that they are lawfully constituted, is open to review. Thus, a decision either by a justice that he was in the commission, or by any arbitrator under a statute that he was duly appointed, or by a sheriff that a valid writ of trial had issued to him, might be shown by affidavit to be untrue." And, on a later occasion, when it was held that affidavits might be used to show that there was no evidence before the justices to support their statement that an objection to the validity of a church-rate was not made *bonâ fide* (z), Mr. Justice *Erle*, advert- ing to the decision in *R. v. Bolton*, said—"The cardinal point upon which the jurisdiction depends cannot be decided conclusively by the inferior Court. . . . No Court of limited jurisdiction can give itself jurisdiction by a wrong decision collateral to the merits of the case upon which the limits to its jurisdiction depends;" and *Crompton*, J., said—"In a late case (a), in which the magistrate decided that a place was not a new street, we refused to interfere, because there the matter was clearly within the jurisdiction of that magistrate In cases relating to servants in husbandry, if the magistrate has decided that the man is a servant in husbandry, and if there is any evidence of that, he is the judge and not we; the justices remain the judges of that as a part of the case before them, but here the jurisdiction is removed on the happening of a certain event, and the principle laid down in *The Queen v. Bolton* and other cases applies. Upon the

(y) *R. v. Grant*, 19 L. J., M. C. 264.
59.

(z) *R. v. Nunneley*, El. Bl. & El.
852; 27 L. J., M. C. 260, 262,

(a) *R. v. Dayman*, 7 El. & Bl.
672; 28 L. J., M. C. 128.

affidavits the dispute appears to have been *bond fide*." So, although the magistrate may have had power to enter upon the inquiry, it may be shown by affidavit that there was no evidence of that which is required to form the basis of his jurisdiction, *e.g.*, of a contract of service under the Master and Servants Act, 4 Geo. 4, c. 34 (*b*). Upon a *certiorari* to bring up orders made by justices requiring persons to find sureties to keep the peace, the Queen's Bench Division has jurisdiction to examine the evidence given before the justices and to quash the orders if the evidence is not sufficient to sustain them (*c*).

Lord Esher in a recent case (*d*), said "If the application were in respect of any proceedings to enforce the order of the magistrates, *Brittain v. Kinnaird* (*e*) would be conclusive to show that as the magistrates had jurisdiction to inquire whether service of the summons had been duly made, the Court would not inquire whether their determination was right or wrong. If the application is for a *certiorari* to bring up the order itself, to quash it for want of jurisdiction, then *The Queen v. Evans* (*f*) is an authority to show that the Court may inquire into the evidence on which the magistrates formed an opinion in the first instance that they had jurisdiction, and the case of *The Queen v. Lee* (*g*) is to the same effect. I think we ought not to overrule *The Queen v. Evans* (*f*), but should support the distinction that I have adverted to, that in proceedings to enforce the order of justices in a case over which the justices have jurisdiction, the Court will not hear evidence to impeach their decision on the facts; but that in proceedings to bring up and quash the order, the Court is bound to consider the evidence before the magistrates, but is not bound to confine itself to that

(*b*) *Re Bailey and Collier*, 3 El. & Bl. 607; 23 L. J., M. C. 161; *ante*, p. 372.

(*c*) *R. v. JJ. Londonderry*, 28 L. R., Ir. 440.

(*d*) *R. v. Farmer*, [1892], 1 Q. B.

637.

(*e*) 1 B. & B. 432.

(*f*) Sub-nom. *Ex parte Rice Jones*, 1 L. M. & P. 357; 19 L. J., M. C. 151.

(*g*) 52 J. P. 344.

evidence, but may hear other evidence to arrive at a determination of the question of jurisdiction."

If it is uncertain whether the complaint charges an offence or not, affidavits may be looked at for the purpose of ascertaining in what sense the justices understood and dealt with it, *(h)*. The Court will not notice any facts contained in the *certiorari* for the purpose of impeaching the conviction *(i)*. So neither will it advert to anything stated in the return, to supply what is defective or omitted in the conviction; but everything necessary to support it must appear in the conviction itself *(k)*.

Ambiguous complaint.

This, however, must not be understood as applying to a *special case* reserved by the sessions, and returned with the conviction for the consideration of the Queen's Bench Division. Such cases have frequently been reserved upon convictions, which have been brought by appeal before the sessions, and removed from thence into the Queen's Bench *(l)*. And the practice has been ratified by the Queen's Bench Division, on a question directly raised concerning its regularity *(m)*. In *R. v. Dickenson*, it was held that, by consent of the parties, a special case may be stated by the Court of Quarter Sessions, although the writ of *certiorari* was taken away; but the Queen's Bench Division afterwards held that if the writ of *certiorari* be taken away by the statute, such a special case cannot be entertained by the Court *(n)*. The Summary Jurisdiction Act,

Reserving special case.

(h) Per Erle, J., in *R. v. Badger*, 6 El. & Bl. 137; 25 L. J., M. C. 81, 84; and see *Re Thompson*, 30 *Id.* 19, 23.

(i) *R. v. Liston*, 5 T. R. 341; and see *R. v. Cashiobury*, 3 D. & R. 35; 1 D. & R. Mag. Ca. 485.

(k) Per Holt, C. J., 2 Salk. 493. On a return to a *habeas corpus*, however, the style and authority of the justices by whom the commitment was made may be supplied by the return; 2 Ld. Rayn. 980.

(l) *R. v. Cook*, 3 T. R. 519; 4 T. R. 273; 3 T. R. 69, 72. If a

case be reserved by the sessions, and state only one question for the opinion of the Queen's Bench, the Court will not consider any other questions; *R. v. Guildford*, 2 Chit. 284.

(m) *R. v. Allen*, 15 East, 346. See *R. v. Jukes*, 8 T. R. 542; *R. v. Dickenson*, 7 El. & Bl. 831; 26 L. J., M. C. 204, where the origin of the practice is pointed out; and 12 & 13 Vict. c. 45, s. 11, *ante*, p. 314.

(n) *R. v. Chantrell*, L. R., 10 Q. B. 587; 44 L. J., M. C. 94.

1879 (*o*), now provides that a writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a Court of general or quarter sessions for obtaining the judgment or determination of a superior Court.

False return. The only remedy (*p*) for a false return is by action on the case, at the suit of the party grieved ; or by criminal information. But the Queen's Bench Division will not stop the filing of the return, upon affidavits of its falsity, except only when the public good requires it, as in the case of orders by the commissioners of sewers (*q*).

Filing return. When the conviction is returned, it is filed in the Crown Office.

Argument. The case must be set down for argument in the Crown paper (*r*), without which it cannot be heard, and it is then brought on in its turn. Paper-books are delivered as in other cases. Where a *certiorari* had been granted to remove a conviction made in the month of September, and a rule for a concilium had been obtained in the November following, and points for argument had been delivered in the ensuing January, the Court in its discretion refused to allow the conviction to be taken off the file, and to be returned to the justices, that they might amend it (*s*). The grounds of refusal were the delay in making the application, and the fact that the justices might have amended it before. All the counsel in support of the order, *i.e.* showing cause against the rule, are heard first, and then all the counsel on the other side in reply.

No objection on account of any omission or mistake in the order or judgment brought up upon the return to the

(*o*) 42 & 43 Vict. c. 49, s. 40.

(*p*) *I.e.*, apart from the contradiction in some cases allowed on affidavit, and discussed *ante*, pp. 346, 372.

(*q*) 2 Hawk. P. C. c. 27, s. 74.

(*r*) *R. v. Nelson*, 2 Barn. 44 ; 2 Nol. 373 ; *R. v. Lord*, 4 D. & L. 405 ; 12 Q. B. 757, *S. C.*

(*s*) *R. v. Turk*, 10 Q. B. 540 ; and see the next note as to amending convictions.

writ will be allowed, unless such omission or mistake has been specified in the rule for issuing the *certiorari* (t).

Upon cause being shown, the conviction is either amended (u), quashed, or confirmed. Amendment, &c. of conviction.

It seems to be understood, that a conviction cannot be quashed in part, and stand good as to the rest (x), but must be quashed generally. This follows from what has before been said concerning the entirety of the judgment, which it is unnecessary here to do more than refer to. There is an instance, however, in which it was allowed, by the consent of the parties, to quash a conviction as to the penalty, and confirm it as to a condemnation of goods (y). An order, if sufficiently divisible, may be quashed in part (z), or may be enforced in part, without the residue being quashed (a). Quashing order, &c. in part.

If the party, who sues out the *certiorari*, die after the return, and before the argument, the Court will nevertheless proceed, and confirm or quash the conviction (b). Confirmed or quashed after death.

If the order is quashed, costs are seldom granted (c); Costs. but if it is confirmed, the prosecutor is entitled to his costs; which are thereupon taxed by the master of the Crown Office (d).

According to the construction that has been put upon Amount of. similar provisions in other statutes, the costs to be taxed

(t) 12 & 13 Vict. c. 45, s. 7. See *ante*, p. 309.

(u) *Ante*, p. 237.

(x) *R. v. Hale*, Cowp. 729; 2 Str. 900, *ante*, p. 181.

(y) *R. v. Hale*, Cowp. 729. The reporter subjoins to the case an observation, that it seemed to be the opinion of Mr. Davenport, counsel for the defendant, that a conviction could not be adjudged bad in part, and good for the rest; but for the benefit of his client, he consented to this mode of accommodating the dispute, and a rule was accordingly made as above.

(z) *Ante*, p. 181.

(a) *R. v. Green*, 20 L. J., M. C.

168.

(b) *R. v. Roberts*, 2 Str. 937. See *ante*, p. 80.

(c) In *R. v. Edmonds*, 31 L. T. 237, it was held that the court in discharging a rule brought up by *certiorari*, had power to grant costs against the party who had abused the process of the court by putting it in motion in a proceeding which was purely vexatious, although no recognizances had been entered into.

(d) As a rule, costs are not given if the conviction or order is amended and then affirmed; *R. v. Higham*, 7 El. & Bl. 557; 26 L. J., M. C. 116, 119.

by the master are only those in the Queen's Bench, upon, and subsequent to, the *certiorari* (e).

Not liable for costs where *certiorari* quashed.

The party suing out the *certiorari* is not liable to costs, where it is superseded *quia improvidè emanavit* (f).

Proceeding on recognizance.

We have before seen, that (g), conformably to the regulations of 5 Geo. 2, c. 19, s. 3, the defendant, before the *certiorari* issues, is obliged to enter into a recognizance for the payment of the costs within one month of confirmation; and an attachment may issue on affidavit of non-payment thereof *within ten days* after demand (h), the costs to be taxed according to the course of the Court, which we have above explained. The recognizance may be taken either before the justices below, or before a judge of the Court (h).

The recognizance—which, if taken before the justices below, is returned upon the *certiorari* along with the conviction—remains filed in the Crown Office; and, after the conviction is affirmed, becomes liable to be estreated, if not discharged or respited. A discharge is obtained of course, by producing at the Crown Office a receipt for the payment of the taxed costs.

Scire facias on recognizance.

The prosecutor may also, after the recognizance is forfeited, and while it remains in the Queen's Bench, sue out a *scire facias* upon it; and upon the return by the sheriff to the *levari facias*, the Court, on motion, will grant a rule for the taxation of the prosecutor's costs by the master, and that they be paid out of the sum levied, rendering the overplus to the bail; the defendant and bail having had notice to show cause. This was said, in one case (i), to be the best and easiest method, the king having no interest in the money, but being only a royal trustee for the party.

Attachment for costs.

But the more usual course is, to proceed by attachment

(e) *R. v. Summers*, 1 Salk. 54 ;
Corner's Cr. Pr. p. 79.

(f) *Sayer on Costs*, p. 306.

(g) *Ante*, p. 365.

(h) *R. v. Midlam*, 3 Burr. 1721.

(i) *R. v. Eyres and Bond*, 4 Burr. 2119.

upon section 3 of the statute 5 Geo. 2, c. 19, which provides, "that the party entitled to the costs, within ten days after demand made of the person or persons who ought to pay the costs, upon oath made of the making of such demand, and refusal of payment thereof, shall have an attachment granted against him or them for the contempt; and the recognizance given upon the allowing the *certiorari* shall not be discharged, until the costs shall be paid, and the order shall be complied with and obeyed." Upon the master's *allocatur*, therefore, and affidavit of the service thereof, and of demand and non-payment as above, an attachment issues, on motion for that purpose.

The intention of the acts requiring security for costs being to prevent vexatious removals, it was held, in a case which occurred upon the former act of 5 Ann. c. 14, s. 2,—where the defendant was compelled to sue out a *certiorari*, merely to obtain a copy of the conviction, for the purpose of defending himself in an action brought for the same fact, the magistrate having improperly refused to grant a copy,—that the defendant, under these circumstances, was not liable to pay the costs of the *certiorari* on the affirmance of the conviction (*k*).

Case where no costs allowed on affirmance.

SECT. 6.—*Execution after Affirmance in the Queen's Bench Division.*

1. *Process* 381 | 2. *Effects of Pardon* 383

Upon the affirmance of the conviction in the Court above, the process for the recovery of the penalty must issue out of that Court; for the record being there, the justices below have no further authority, and cannot award any process upon it (*l*).

(*k*) *R. v. Midlam*, 3 Burr. 1720. *R. v. JJ. Hants*, 33 L. J., M. C.
 (*l*) See Tidd's Prac. 1032, 1245, 104.
 8th ed.; Corner's Cr. Pr. p. 79;

In one case, on the statute 13 Car. 2, c. 10, the Court refused to issue an attachment, on affirmance of the conviction; because the proper process, which it was admitted the Court ought to execute upon their judgment of affirmance, was by *levari facias* (m). In another case upon the same statute, it was expressly held, that the Court might award a *feri facias* against the goods, and in default thereof a *capias ad satisfaciendum* against the person; and a *feri facias* was awarded accordingly (n). On a still later occasion, a *levari facias* having been awarded to the sheriff, after affirmance of a conviction for deer-stealing, no doubt was made that the Court must award execution; for the record could not be sent back to the justices; and, as the Court have a power to affirm the conviction, they have, by necessary consequence, a power to award execution (o). But an expression attributed to Lord *Holt*, in one case, seems to convey a doubt, whether, in default of goods to levy upon, the Court of Queen's Bench could award a commitment (p).

And in a case, where the justices on conviction had a *discretionary* power, for want of sufficient distress whereon to levy the penalty, to commit the offender to prison for any term not exceeding six months; and the conviction having been removed by *certiorari* and affirmed, a *levari facias* was awarded, to which there was a return of *nulla bona*: it was held, that as the Court of Queen's Bench had no such authority as was given to the justices, as to the term of imprisonment; the proper course was, in order to prevent a failure of justice, to grant a *procedendo* to carry back to the justices the record of conviction and the order of sessions, and command the justices to enter continuances upon the appeal from session to session, and proceed to award execution (q).

(m) *R. v. Pullen*, 1 Salk. 369.

(p) *R. v. Speed*, 1 Ld. Raym.

(n) *R. v. Rogers*, 4 W. & M. 1 584.
Salk. 369; Carth. 231.

(q) *R. v. Neville*, 2 B. & Ad.

(o) *R. v. Speed*, 1 Salk. 379; and 299.
S. P. 2 Ld. Raym. 768.

If the person entitled to the penalty die after affirmance, and before execution, his personal representative may suggest the death upon the roll, and have execution by *scire facias*; but cannot sue out a *levari facias* for that purpose, without a *scire facias* (r).

The process issuing out of the superior Court is not directed to the constable, as the warrant of the justices would be, but to the sheriff; for he is the proper officer of the Court (r).

A question has been made, whether a summary conviction can be remitted by pardon. Where the forfeiture was given to the party grieved, it seemed to be the better opinion, that a summary conviction for a penalty was not within the terms of a general pardon (s); but now, by 22 Vict. c. 32, power is given to the Crown to remit penalties, although they may be payable wholly or in part to some party other than the Crown.

(r) *R. v. Ford*, 2 *Ld. Raym.* 768.

(s) *R. v. Barret*, 1 *Salk.* 383. It is laid down in 3 *Inst.* 238, that after an action popular is brought, *as well for the king as for the informer*, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because, by bringing the action the informer

hath an interest therein: but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act), because the informer cannot bring an action or information originally for his part only, but must pursue the statute, and, if the action be given to the *party aggrieved*, the king cannot discharge the same.

Remitted by
pardon.

PART IV.
OF THE RESPONSIBILITY AND INDEMNITY OF MAGISTRATES
AND THEIR OFFICERS.

CHAPTER I.

PROCEEDINGS AGAINST JUSTICES.

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| 1 <i>Where an Action will lie</i> . 385 2. <i>Formalities in Actions</i> <i>against Justices</i> . . . 402 | | 3. <i>Evidences, Damages and</i> <i>Costs in such Actions</i> . 415 4. <i>Proceedings by Criminal In-</i> <i>formation</i> 418 |
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HAVING in the foregoing pages defined the powers and duties of justices of peace and their officers, in the exercise of a summary penal jurisdiction, we are now, in conclusion, to describe the nature and extent of responsibility to which they are subject in the execution of those duties, and the modes of redress allowed by law for any irregularity or excess in their proceedings (a).

(a) When a party is entitled to relief *ex debito justitiæ* against illegal proceedings, the Courts have no power to impose upon him the terms that he shall not bring any action against the party from whose illegal act he has suffered, as a condition of relief; but they often re-
fuse the costs of the application

unless he consent to such terms. See *Downey's case*, 7 Q. B. 288; and *Re Blues*, 5 El. & Bl. 291; 24 L. J., M. C. 138; 1 Jur., N. S. 543. When the remedy is by appeal and not by action, see *Bavin v. Hutchinson*, 31 L. J., M. C. 229.

SECT. I.—*Of the Action against Justices for Acts done in pursuance of Conviction.*

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| 1. 11 & 12 Vict. c. 44— <i>Acts within Jurisdiction</i> 385 <i>Acts without Jurisdiction</i> 390 | 7. <i>Setting aside Proceedings in Actions against Justices.</i> 400 |
| 2. <i>Warrant on defective Conviction.</i> 397 | 8. <i>In what case Nonsuit or Verdict for Defendant</i> . 400 |
| 3. <i>Warrant on defective Rate</i> . 398 | 9. <i>Action for Words</i> . . . 401 |
| 4. <i>Discretionary power in Justice</i> 398 | 10. <i>Magistrate not to be sued in County Court if he object thereto</i> 401 |
| 5. <i>Rule ordering Justice to do un Act</i> 398 | 11. <i>Warrant for Possession of Tenements</i> 401 |
| 6. <i>Warrant on Conviction affirmed on Appeal.</i> . . 400 | |

Whether a justice of the peace is liable to an action for any *judicial* act, where he has *jurisdiction* over the subject matter of inquiry, must be considered as doubtful. This point was raised some years ago before the Court of Exchequer in the case of *Gelen v. Hall* (b). The second count of the declaration in that case averred that the defendant, being a justice of the peace, unlawfully, maliciously, and without reasonable and probable cause, took an information, issued a summons against, and convicted in a penalty and costs, the plaintiff for an offence against a bye-law of a railway company, which penalty and costs he had to pay to prevent himself from being imprisoned, that the conviction had been quashed on appeal, and that the defendant had thereby been damnified. A verdict for 5*l.* being found for the plaintiff on this count, it was moved that the judgment should be arrested on the ground that no such action would lie. After elaborate arguments, the Court in a considered judgment said, "A rule was obtained on behalf of the defendant to set aside the verdict as being against evidence, and also to arrest judgment on the ground that the second count discloses no legal cause of action. Upon the latter point we have bestowed much consideration, and we are not at present prepared to hold the count bad." They granted a new trial. If, however, the

(b) 2 Hurl. & N. 379.

action lies, it must be on the ground that the justice was actuated by corrupt and malicious motives. This was so at common law (c), and now it is so expressly declared by 11 & 12 Vict. c. 44, s. 1.

By that section, every action brought against any justice of the peace for any act done by him in the execution of his duty as such justice (d), *with respect to any matter within his jurisdiction* as such justice, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done *maliciously, and without reasonable and probable cause*; and if at the trial, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuited, or a verdict shall be given for the defendant.

This section, it will be observed, makes no distinction between ministerial and judicial acts; and should it eventually be held that a justice is not liable at all in an action for the latter, *i.e.* where jurisdiction over subject matter, it will become necessary, firstly, to distinguish between judicial and ministerial acts (e), and, secondly, to decide what ministerial acts are entitled to the protection afforded by this section.

Although this section seems to assume that an action will lie against a justice for an act done by him in his judicial capacity and in respect of a matter within his jurisdiction, there is no decision in support of any such proceeding. It would seem from the principle of recent cases (f) that a justice cannot be sued for acts done maliciously in the course of dealing with a matter over which he has jurisdiction.

(c) See the authorities cited in *Gelen v. Hall*, *supra*. See also per Erle, J., in *Taylor v. Nesfield*, 3 E. & B. 724, 730.

(d) See *Kirby v. Simpson*, 10 Exch. 358; *post*, p. 392, n. (c).

(e) See *ante*, p. 21, n. (m).

(f) See *Scott v. Stansfield*. L. R., 3 Ex. 220; *Dawkins v. Paulet*,

L. R. 5 Q. B. 94, in which it was held that an action would not lie against a county court judge or a military officer, for words maliciously and not *bonâ fide* spoken by them in the course of the discharge of their duty. See also *Dawkins v. Lord Rokeby*, L. R., 8 Q. B. 255; L. R. 7 H. L. 744.

A distinction must be drawn between a mere mistake or irregularity in point of law and a want or excess of jurisdiction. In one case, *Crompton*, J., said—"We must take care that we do not go too far, and say that in every case in which the justices come to a wrong conclusion they act without jurisdiction. Their jurisdiction is to decide the law and the fact" (*g*), and there may be an erroneous exercise of jurisdiction without an excess of it. Thus, where justices signed a conviction and warrant of commitment, leaving blanks for the amount of costs to be inserted, this was held to be a mere irregularity and not an excess of jurisdiction, and the plaintiff having brought an action for false imprisonment, was held to have been rightly nonsuited under the first section of this statute (*h*). So where costs were ordered to be paid to the party to an appeal, instead of the clerk of the peace for him, it was held to be merely erroneous procedure, and not a defect in jurisdiction (*i*).

And where a man was summoned for nonpayment of a church rate, and the justices without drawing up a formal order issued a warrant bearing the date of their decision, and failing both to recite the order and to show a previous disobedience of the order: it was held that the error was of form, and the justices were entitled to the protection of sect. 1. In this case, *Jervis*, C. J., said—"If necessary, the Court might, perhaps, draw a distinction between sects. 1 and 2 of 11 & 12 Vict. c. 44; but it is not necessary. Were it so, I confess I should be inclined to think that 'exceeding his jurisdiction' in sect. 2 means assuming to do something which the act under which he is proceeding could by no possibility justify, as in the case in the Queen's Bench of *Leary v. Patrick*, where there could have been no authority to issue a distress for costs not

(*g*) *R. v. Lundie*, 31 L. J., M. C. 157, 160; and see *R. v. JJ. Sussex*, 7 El. & Bl. 220; 26 L. J., M. C. 74.

(*h*) *Bott v. Ackroyd*, 28 L. J., M. C. 207.

(*i*) *R. v. Binney*, 1 E. & B. 810.

adjudged by a conviction, or as was the case in *Barton v. Bricknell*, in which case there was no power to order the plaintiff to be put in the stocks. But I abstain from offering an opinion on this point" (k).

In *Barton v. Bricknell*, a justice of the peace convicted a man under 29 Car. 2, c. 7, s. 1, in a penalty and costs to be levied by distress, and the conviction directed that, in default of payment and sufficient distress, he should be put in the stocks; a distress was levied, and an action of trespass was then brought: it was held that the complaint was for distraining, that this was within the justice's jurisdiction, and that he was entitled to the protection of 11 & 12 Vict. c. 44, s. 1, notwithstanding the illegal alternative in the judgment (l). A justice has jurisdiction to require sureties for good behaviour of a person charged before him upon an information with having published a libel calculated to produce a breach of the peace, and, in default, to commit him to prison; and was therefore held not liable to an action of trespass, although the warrant had required the libeller to find sureties "to keep the peace," and had been quashed (m). And, in like manner, a justice who refuses to take bail on a charge of misdemeanor is not liable without malice (n).

And where a man was summoned before justices for nonpayment of a church rate, and defended himself on the ground that the complaint was too late, and they had no jurisdiction because the rate had been demanded more than six months before, but evidence of a later demand within time being given, the justices wrongfully decided against him, they were held to be protected by sect. 1, as it was a question for them to determine (o). And if, on

(k) *Ratt v. Parkinson*, 20 L. J., M. C. 208.

(l) *Barton v. Bricknell*, 13 Q. B. 393.

(m) *Haylock v. Sparke*, 1 E. & B. 471; 22 L. J., M. C. 67. The Court were of opinion that the justice had intended to exercise

the jurisdiction, which he possessed, viz.—to require sureties for good behaviour, and that it was a case of jurisdiction informally exercised.

(n) *Linford v. Fitzroy*, 13 Q. B. 240.

(o) *Sommerville v. Mirehouse*, 1 B. & S. 652.

such a summons, the validity of the rate is disputed, the question of *bona fides* being for the justices to decide, their decision is within sect. 1, unless, indeed, they have chosen so to decide and attempted to give themselves jurisdiction by acting without reasonable or probable cause (*p*).

And where a warrant of distress, regular in other respects, was signed by a justice who had not taken the oaths at the general sessions, nor delivered in the certificate required by law: it was held, that an action of trespass would not lie against the persons who executed the warrant; for the acts of a justice of the peace who is not duly qualified are not absolutely void (*q*). Knowledge on the part of the committing magistrate that the prisoner will be subjected to restrictions unnecessarily severe in the gaol, to which the commitment is made, does not make the magistrate a trespasser unless he expressly direct such treatment to be adopted in the particular case (*r*).

And where a justice committed a party charged (under 7 & 8 Geo. 4, c. 30), with cutting down a tree growing on premises in his own occupation, belonging to another person: it was held, that in the absence of all proof of malice, he could not be charged as having acted without jurisdiction, and liable in an action of trespass and false imprisonment; for, if the trees were excepted in the lease the tenant might be a trespasser; and, if liable in trespass, it was by no means clear that he might not be liable criminally (*s*).

Where (supposing the facts alleged to be true) a magistrate has jurisdiction, his jurisdiction, and consequent immunity from an action, cannot be made to depend upon

(*p*) *Pease v. Chaytor*, 1 B. & S. 658; 31 L. J., M. C. 1; 3 B. & S. 620; 32 L. J., M. C. 121.

(*q*) *Margate Pier Company v. Hannam*, 3 B. & Ald, 266, *ante*, p. 26.

(*r*) *Cave v. Mountain*, 1 M. & G. 257. In this case the period for which the party had been com-

mitted for further examination appeared to the Court to be too long, but as the jury had found to the satisfaction of the judge at Nisi Prius, that the detention was not excessive, a rule for a new trial was refused.

(*s*) *Mills v. Collett*, 6 Bing 85; 3 M. & P. 242.

the truth or falsehood of those facts, or on the sufficiency or insufficiency of the evidence adduced for the purpose of establishing them (*t*).

Acts without
or in excess of
jurisdiction.

When a justice acts without jurisdiction or in excess of it, he becomes liable to an action, whether he be acting judicially or ministerially (*u*).

Formerly, the action was maintainable before the conviction was quashed. And although it was clear that the action lay if the conviction were bad on its face, either by disclosing want of jurisdiction or an absence of those particulars necessary to constitute a good conviction, yet if it were good on its face, it was a matter of very considerable doubt as to how far the facts stated in it could be controverted. It was said that although, as a general rule, a conviction good on its face was an estoppel as to all matters stated in it, it might still be shown that the justice had no jurisdiction. This however was not altogether clear, and even if it were so, it was very difficult to decide the extent of the exception (*x*). The decision of this question has

(*t*) *Cave v. Mountain*, 1 M. & G. 257, 262; Taylor on Evidence, Vol. 2, p. 1427, (8th ed.).

(*u*) *Crepps v. Durden*, Cowper, 640; 1 Smith's L. C.; *Davis v. Russell*, 5 Bing. 354; Hardr. 483; *Perkins v. Proctor*, 2 Wils. 384; *Sadgrove v. Kirby*, 6 T. R. 483; *West v. Small*, 3 M. & W. 418; *Doswell v. Impey*, 1 B. & C. 169; *Davis v. Cupper*, 10 B. & C. 28; *Jones v. Gurden*, 2 Gale & D. 133.

(*x*) The older decisions, which are inserted in the text in former editions of this work, may be thus briefly summarized for the purpose of reference. Where want of jurisdiction appeared on the face of the conviction, an action lay without first quashing the conviction; *Crepps v. Durden*, Cowp. 640; *Gray v. Cookson*, 16 East, 15; *Groome v. Forrester*, 5 M. & S. 314; *Terry v. Huntingdon*, Hardr. 480. But if there was jurisdiction in the case, a subsisting conviction protected the defendant,

however erroneous in fact or law, provided that it was not made maliciously and without reasonable and probable cause, and that the execution upon it was regular; *Fullers v. Fotch*, Holt. 287; *Strickland v. Ward*, 7 T. R. 633, n. (*a*); *Basten v. Carew*, 3 B. & C. 649; *Doswell v. Impey*, 1 Id. 163; *Fawcett v. Fowles*, 7 Id. 394. In *Brittain v. Kinnaird*, 1 B. & B. 432, a conviction under the Bumboat Act, 2 Geo. 3, c. 28, Dallas, C. J., said, "Extreme cases have been put, as of a magistrate seizing a ship of seventy-four guns and calling it a boat. Suppose such a thing done, the conviction is still conclusive, and we cannot look out of it;" *Mann v. Davers*, 3 B. & Ald. 105; *Terry v. Newman*, 15 M. & W. 653; *Mould v. Williams*, 5 Q. B. 469. Under the Highway Act, 5 & 6 Will. 4, c. 50, s. 73 (*Alridge v. Haines*, 2 B. & Ad. 395; *Rogers v. Jones*, 3 B. & C. 409), where the conviction differed from the com-

now become (with respect to actions against justices) in a great measure unimportant, as it is necessary, under 11 & 12 Vict. c. 44, s. 2, to quash the conviction before bringing any action against a justice for acts done without or in excess of jurisdiction. That section provides, that for any act done by a justice in *a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction* (y), any person injured thereby, or by any act done under any conviction or order made, or warrant issued, by such justice in any such matter, may maintain an action against the justice as he might have done before the passing of the act, without alleging malice or the want of reasonable and probable cause; no such action, however, shall be brought for anything done under the conviction or order, until it shall have been quashed upon appeal, or upon application to the Queen's Bench; nor shall such action be brought for anything done under such warrant which shall have been issued to procure the appearance of the party, and which shall have been followed by a conviction or order in the same matter, until after the conviction or order shall have been so quashed; and

mitment in statement of the offence: justices were held liable to an action. Evidence has been admitted to explain an ambiguous finding on the face of a conviction; see *Ayrton v. Abbott*, 14 Q. B. 1. Before the statute 43 Geo. 3, c. 141 (now repealed) if the conviction had been quashed, the justice was left without any defence at the suit of the party convicted, but that statute protected him to a certain extent, by rendering him liable only to a return of the penalty (if any levied) and damages not exceeding two-pence, without costs, unless he had acted maliciously, and in such case the plaintiff was not to recover anything if the justice proved at the trial that he was really guilty of the offence imputed to him; the justice could not do this unless the conviction had been quashed,

though perhaps he might have shown the guilt of the plaintiff in mitigation of damages; *Rogers v. Jones*, 3 B. & C. 409. The Act applied only to cases where there had been a conviction; *Massey v. Johnson*, 12 East, 67; and where the conviction had been quashed, not where the prisoner had been merely discharged on *habeas corpus*; *Gray v. Cookson*, *supra*; *Colonial Bank of Australasia v. Willan*, L. R., 5 P. C. 417; 43 L. J., P. C. 39.

(y) That is, as it appears, where the justice has assumed to do something which the act, under which he was proceeding, can by no possibility justify; see per Jervis, C. J., in *Ratt v. Parkinson*, 20 L. J., M. C. 208, 212; see *Haylock v. Sparke*, *infra*; and *Leary v. Patrick*, 15 Q. B. 266.

if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons (z) were issued previously to such warrant, and the summons were served upon the person either personally or by levying the same for him with some person at his last or most usual place of abode, and he did not appear (a) according to the exigency of the summons, in such case no action shall be maintained against such justice for anything done under such warrant.

Upon the conviction being quashed, the justice has no defence to an action brought under this section, unless he can show that he was acting in a matter within his jurisdiction, and is entitled to the protection of the first section of the statute; in other words, that the action is ill-conceived in consequence of the absence of allegation of malice on his part (b). Should the action be brought under sect. 1, of course his having a defence or not depends on whether the plaintiff fails or succeeds in proving malice (c).

(z) This part of the section does not apply to a summons or warrant issued *after* conviction; *Bessell v. Wilson*, 1 El. & Bl. 489; 22 L. J., M. C. 94, S. C.

(a) Appearance by counsel or solicitor is sufficient; *Bessell v. Wilson*, 1 El. & Bl. 489; 22 L. J. M. C. 94, S. C.

(b) *Barton v. Bricknell*, 13 Q. B. 393; *Haylock v. Sparke*, 1 E. & B. 471; 22 L. J., C. P. 67; *Bott v. Ackroyd*, 28 L. J., M. C. 207; *Somerville v. Mirehouse*, 1 B. & S. 652; *Pease v. Chaytor*, 1 B. & S. 658; *Lalor v. Bland*, 8 Ir. C. L. Rep. 115; *Lawrenson v. Hill*, 10 Ir. C. L. Rep. 177; *Linford v. Fitzroy*, 13 Q. B. 240.

(c) In an action against a magistrate for a malicious conviction, the question is not whether there was any actual ground for imputing the offence to the plaintiff, but whether,

upon the hearing, there appeared to be any. The plaintiff must show a want of probable cause for the conviction, which he can only do by proving what passed upon the hearing before the magistrate when the conviction took place. The magistrate has nothing to do with the guilt or innocence of the offender, except as it appears from the evidence laid before him; Per Gibbs, C. J., in *Burley v. Bethune*, 5 Taunt. 383; see *Rogers v. Jones*, 3 B. & C. 409, and *Peas v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121. Under the above statute, a justice may be acting maliciously, and without reasonable or probable cause, and yet be acting in the execution of his duty as such justice; for instance, where maliciously and without reasonable or probable cause he excites a person to bring a complaint before him, and convicts upon

Where a justice to an otherwise good conviction added an illegal alternative, that, in default of payment of the penalty and costs or sufficient distress, the convicted person should be put in the stocks: it was held that if this alternative had been enforced, the justice would not have been entitled to the benefit of sect. 1 (*d*).

So, where justices convicted a man under 6 & 7 Vict. c. 68, for illegally performing stage plays, the conviction contained no adjudication of costs, but the warrant of distress recited the conviction as if it did, and the defendant, before the issue of the warrant of distress, was detained to enforce payment of the penalty, which afterwards was levied together with the costs under the warrant: it was held that, whether they had power to adjudicate costs or not, they had not done so, and that the imprisonment and distress were "an excess of jurisdiction" within sect. 2 (*e*).

Where the objection to a conviction and warrant of commitment was that the justices had signed it leaving blanks for the amount of costs, the omission was held, in an action for false imprisonment against the justices brought after the conviction had been quashed, to be an erroneous exercise of jurisdiction only, and not an excess (*f*).

A justice, having convicted a man under the Copyright of Designs Act (6 & 7 Vict. c. 65), adjudged him to pay a penalty, and, on his not paying it, summoned him to show cause why he should not be committed in default and further dealt with according to law; counsel and

such complaint; *Kirby v. Simpson*, 10 Exch. 358; 23 L. J., M. C. 165; 18 Jur. 983, *S. C.* If a warrant of distress, or commitment, be founded on a defective order or conviction, or on one made without jurisdiction, and either the goods of the party, or his person, be taken in execution under it, the justices who made the order or conviction, not those who granted the warrant, are liable (where any action lies) for the

defect in the order or conviction, or for the want of jurisdiction, provided that the warrant was granted *bond fide*, and without collusion: 11 & 12 Vict. c. 44, s. 3.

(*d*) *Barton v. Bricknell*, 13 Q. B. 393.

(*e*) *Leary v. Patrick*, 15 Q. B. 266; 19 L. J., M. C. 211.

(*f*) *Bott v. Ackroyd*, 28 L. J., M. C. 207.

solicitor appeared for the defendant, but the justice refused to hear the matter in his absence, and caused him to be apprehended for neglecting to appear: it was held that such justice acted without jurisdiction, and that he could not avail himself of the latter part of sect. 2 of 11 & 12 Vict. c. 44, as to warrants for non-appearance, for, first, that part of the section did not apply to a summons after conviction; and, secondly, an appearance by counsel and solicitor was sufficient (*g*).

And where a justice in Ireland issued a warrant of commitment founded on an information which disclosed no criminal offence: it was held that it could not be supported by showing that there was oral testimony of an offence, and that the justice having committed the defendant to prison on such information was not entitled to the protection of sect. 1 of 12 Vict. c. 16 (which corresponds with the English act), but must be taken to have exceeded his jurisdiction, however much he acted *bond fide* (*h*).

The protection of a magistrate depends not on general jurisdiction over the subject-matter, but over the particular matter or individual. Therefore, where a justice issued his warrant to apprehend a party to answer a charge of assault, upon a deposition taken in the absence of the justice, he not at any time seeing, examining or hearing the deponent, he was held liable to an action of trespass, although he otherwise had jurisdiction over the charge (*i*).

Justices have been held to have acted without jurisdiction within the second section, where they issued a warrant of distress to levy a contribution under an order of the Poor Law Commissioners, against a party who was not legally liable to pay it (*k*).

So where two magistrates committed a defendant to

(*g*) *Bessell v. Wilson*, 1 E. & B. 889; *ante*, p. 21, n. (*m*). The taking of a deposition in such a case is a judicial act.

(*h*) *Lawrenson v. Hill*, 10 Ir. C. L. Rep. 177.

(*k*) *Newbould v. Collman*, 6 Exch.

(*i*) *Caudle v. Seymour*, 1 Q. B. 189.

prison, under the 5 Geo. 4, c. 18, s. 2, in default of sufficient goods to satisfy the amount of a penalty by distress, and the commitment was merely by parol: it was held, that they were answerable in an action of trespass, notwithstanding a warrant in writing was made out by them a few days after the commitment took place; for the detention of a party, before the warrant is signed, cannot be justified for any longer term than is necessary for making it out (*l*).

And, before 11 & 12 Vict. c. 44, where magistrates granted a warrant of distress to levy poor rates upon a party whose land that was rated was found to lie in another parish, it was held, that they were liable in an action of trespass (*m*).

A magistrate has no right to detain a person, who is well known, to answer a charge of misdemeanor, verbally intimated to the magistrate, but without a regular information. Thus, where a party, who had been in attendance before two magistrates, was about to leave the office, when one of the magistrates ordered him to remain, as a charge was to be preferred against him for attempting to tamper with the administration of justice, and he was forcibly detained for twenty minutes, when the charge having been regularly made, the magistrates thought it did not amount to a crime, and he was then allowed to go away: Lord *Tenterden* held, that the magistrates were answerable on an indictment for assault and false imprisonment, saying, that the magistrates ought to have had an information regularly before them, that they might be able to judge whether it charged any offence, to which the party ought to answer (*n*).

Neither has a magistrate the right to imprison any one

(*l*) *Hutchinson v. Lowndes*, 4 B. & Adol. 118, *ante*, p. 268.

(*m*) *Weaver v. Price*, 3 B. & Adol. 409; *Newbould v. Coltman and another*, 6 Exch. 189; *Charleton v. Alway*, 11 A. & E. 993. See now

11 & 12 Vict. c. 44, s. 4.

(*n*) *R. v. Birnie*, 1 Mood. & R. 160; 5 C. & P. 206. See *Hazeldine v. Grove*, 3 Q. B. 997, and 11 & 12 Vict. c. 44, s. 1.

for breach of the peace, unless committed within his own view, without first hearing the charge. Therefore, where a magistrate, meeting constables having in custody the plaintiff on a charge of drunkenness, ordered him to be taken back to the lock-up house, saying he would see him the next day; and the plaintiff was kept confined until then, when he was ordered by the magistrates to be fined: it was held, that it was his duty, either to have gone into the case,—or, if he could not do so, not to have interfered, but have let the officer take him before another magistrate,—and that he was liable to an action of trespass (*o*).

Where a plaintiff was arrested by a constable under the direction of a county inspector of constabulary, and taken before a magistrate before whom an information was sworn asking for the further detention of the plaintiff, and the plaintiff was accordingly detained, it was held that the fact of taking the information with the knowledge that the plaintiff would be detained did not render the magistrate acting without malice liable to an action for false imprisonment (*p*). It would appear from the judgment that if the taking of the information were the *causa causans* of the detention, or if it had been taken for the purpose of the detention being continued, the magistrate would have been liable to an action for false imprisonment.

Where the plaintiff, being taken before the defendant, a magistrate, on a complaint of having killed a dog, and refusing to adopt the recommendation to make terms, was told by the defendant, that unless he paid a certain sum, he should convict him in a penalty of that amount under the Malicious Trespass Act, which the plaintiff also rejected, and declared he would carry the case elsewhere; upon which the defendant called in a constable, and ordered him to take the plaintiff out of the office, and if the parties did not settle, to bring him in again, and he would proceed

(*o*) *Edwards v. Ferris*, 7 C. & P. 542; *Hazeldine v. Grove*, *supra*.

(*p*) *Donohoe v. Thompson* 15 L. T. 131.

to convict him under the act ; and the plaintiff accordingly went out with the constable : this was held to be sufficient evidence of an imprisonment of the plaintiff by order of the defendant, and it was also held, that there was nothing to furnish a justification for such imprisonment (*q*).

The statute 13 Geo. 3, c. 78, s. 60, imposing a penalty on the driver of a cart, &c. for riding thereon under the circumstances therein mentioned, authorized a justice, on his own view, or upon the oath of one witness, to convict the offender ; and, in case the offender refused to discover his name, or the name of the owner of the cart, &c., he was subjected to a like penalty, and might, without warrant, be apprehended forthwith by the person seeing the offence committed. When the driver of a waggon committed an offence within this act, in the view of a justice ; and having placed himself before the board on which his master's name was painted, so as to prevent the discovery of the owner, the justice, in order to ascertain the name, stopped the horses, and laid hands on the driver, and removed him from his position before the board, and thereby informed himself of the ownership : it was held on demurrer, that this was a trespass, and gave the driver a right of action (*r*).

Before leaving these two sections of 11 & 12 Vict. c. 44, it should be observed that, if the action be brought under the first section, it is not necessary to quash any conviction or order (*s*) ; and that, if it be brought under sect. 2, what is required to be quashed is " the conviction or order."

By sect. 3 of this act, where a conviction or order is made by one or more justices, and a warrant of distress or commitment is granted thereon by another justice *bonâ fide* and without collusion, no action shall be brought against the justice who so granted the warrant, by reason

Action, where
warrant on
defective
conviction.

(*q*) *Bridgett v. Coyney*, 1 Man. & Ry. 211.

(*r*) *Jones v. Owen*, 2 D. & R. 600 ; 1 D. & R. Mag. Ca. 290.

This statute is now repealed ; see 5 & 6 Will. 4, c. 50, s. 78.

(*s*) *Lalor v. Bland*, 8 Ir. C. L. Rep. 115.

of any defect in the conviction or order, or for any want of jurisdiction in the justices who made the same, but the action (if any) shall be brought against the justices who made the conviction or order.

Action for levying a poor rate or exercising a discretionary power.

By sect. 4, where any poor rate shall be made, allowed and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice granting the warrant by reason of any defect in the rate, or of such person not being liable to be rated therein; and in all cases where a discretionary power is given to a justice by any act of parliament, no action shall be brought against him for or by reason of the manner in which he shall have exercised his discretion in the execution of such power (*t*).

Rule of Queen's Bench Division ordering justice to do an act, no action lies for doing it.

By sect. 5, where a justice refuses to do any act relating to the duties of his office as such justice, the party requiring the act to be done may apply to the Queen's Bench Division, upon an affidavit of the facts, for a rule calling on the justice, and the party to be affected by the act, to show cause why it should not be done; and if after due service of such rule good cause shall not be shown against it, the Court may make it absolute, with or without, or upon payment of costs; and the justice, upon being served with such rule absolute, shall obey the same, and do the act required; and no action or proceeding shall be commenced or prosecuted against the justice for having obeyed such rule and done the act (*u*).

The remedy given by this section is not intended simply for the benefit of justices, or confined to cases in which their jurisdiction is doubtful, but it extends to cases in

(*t*) See *Bassett v. Godschall*, 3 Wils. 121.

(*u*) A surveyor of highways, who executes a warrant issued in pursuance of such rule, may be liable to an action, although the justices are protected; *Freeman v. Read*, 4 B. & S. 174; 32 L. J., M. C. 266. By 20 & 21 Vict. c. 43, s. 9, no ac-

tion or other proceeding shall be commenced against justices after the decision of a superior Court, on a case stated by them under the act, by reason of any defect in the order or conviction affirmed by the Court, and enforced by the justices, see *ante*, p. 325.

which they refuse to do an act relating to the duties of their office (x). It has been held that this section only applies if the act be one by which the justices incur liability (y), but in the later case of the *Queen v. Phillimore* (z), the Court considered that this rule would narrow the operation of the statute too much, though they declined to lay down any absolute rule as to when the proceeding should be under this section, and when by mandamus (a). This statute is not limited to cases where the justice requires protection in the discharge of any of his duties; the order under this section and mandamus are concurrent remedies, and either may be granted at the discretion of the Court (b). The Queen's Bench Division will enquire into the validity of an order of justices, before compelling them, under this section, to issue a distress warrant to enforce it, and will refuse a rule for that purpose, if the order appear to be invalid (c).

The application is by affidavit, setting out the facts of the case. It has been held that an application under this

(x) *R. v. Aston*, 1 L. M. & P. 491; *R. v. JJ. Bristol*, 18 Jur. 426, n.; *In re Clee and Osborne*, 21 L. J., M. C. 112. Where a magistrate has refused a summons on the ground that the information does not disclose an indictable offence, the High Court of Justice has no jurisdiction to review his decision, either as to law or as to fact, and therefore in such a case a rule, under 11 & 12 Vict. c. 44, s. 5, calling upon the magistrate to shew cause why he should not hear and determine the application for a summons will not be granted. *Ex parte Lewis*, 21 Q. B. D. 191.

(y) *R. v. Percy*, L. R., 9 Q. B. 64.

(z) 14 Q. B. D. 474.

(a) Where justices refuse to hear an information, the proper remedy is mandamus. *R. v. JJ. Cumberland*, 43 L. J., M. C. 45; 38 J. P. 422. In general a

mandamus will not be granted to compel justices to enforce a conviction, either by commitment or distress. But a mandamus will issue in the case of a distress warrant to levy a rate. *Ex parte Thomas*, 16 L. J., M. C. 57; *In re Williams* 2 New Sess. Cas. 570. The Court will not grant a second rule for a mandamus where the first has been discharged even though a demand and refusal have taken place since the discharge of the first; *R. v. JJ. Bodmin*, [1892], 2 Q. B. 21; 61 L. J., M. C. 151.

(b) *R. v. Biron*, 14 Q. B. D. 474; 54 L. J., M. C. 77.

(c) *R. v. Collins and another*, 21 L. J., M. C. 73; 16 Jur. 422, S. C.; *R. v. Browne*, 13 Q. B. 654. Orders to issue warrants of distress were made in *R. v. JJ. Kingston-on-Thames*, E. B. & E. 256; *R. v. Bradshaw*, 29 L. J., M. C. 176.

section may be moved for by an applicant in person (*d*). On a motion against a magistrate under this section, the general rule is, that the Court will order the unsuccessful party to pay costs, and will not, on the motion for costs, enter into the merits of the original application (*e*).

Affidavit of justice.

Where on an *ex parte* application to a superior Court, a rule or other process has been obtained calling in question the decision of a justice, such justice may now make and file an affidavit setting forth the grounds of the decision, and any facts bearing on the question (*f*).

After conviction confirmed on appeal, no action for anything done on warrant upon it for defect in conviction.

By sect. 6, where a warrant of distress or commitment shall be granted by a justice upon any conviction or order, which either before or after the granting of the warrant shall have been confirmed upon appeal, no action shall be brought against such justice for anything done under the warrant by reason of any defect in the conviction or order.

If action brought, where prohibited by 11 & 12 Vict. c. 44, proceedings may be set aside.

By sect. 7, whenever by this act it is enacted that no action shall be brought under particular circumstances, if such action be brought, a judge upon application of the defendant, and upon an affidavit of facts, may set aside the proceedings with or without costs (*g*).

In what case nonsuit or verdict for defendant.

By sect. 12, if at the trial of any action against a justice for anything done in the execution of his office the plaintiff shall not prove that the action was brought within the time limited, or that notice of action was given one calendar month before the action was commenced, or if he shall not prove the cause of action stated in the notice, or that the cause of action arose in the county or place laid as venue, or (when the plaintiff sues in the County Court) within

(*d*) *R. v. Biron*, 14 Q. B. D. 414; 54 L. J., M. C. 57. "It appears that upon applications of this kind it has been the practice to allowed the prosecutor to make the motion in person, notwithstanding the well-known rule in respect to mandamus, for which the present proceeding is a substitute—that the application can only be made by counsel. Our experience in this

case makes us almost doubt the wisdom of the relaxation of the old rule." Per Wills J. in *Ex parte Lewis*, 21 Q. B. D. 191.

(*e*) *R. v. Ingham*, 17 Q. B. 884.

(*f*) See 35 & 36 Vict. c. 26, s. 2. *post*, Appendix.

(*g*) Sects. 8, 9, 10, 11 and 13 will be found *post*, pp. 402, 404, 405.

the district for which such Court is holden, the plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant (*h*).

Where upon a proceeding on the game laws in Scotland, after the defendant had admitted that the case was made out against him, and had appealed to the leniency of the Court for a mitigation of the penalty, on the ground of his supporting his aged father and mother by his labour,—two of the justices asserted “that he was a thief, and had been known to steal bee-hives and leather;” it was held by the House of Lords, that the justices were responsible in an action for these words, if malice was clearly made out against them; the privilege of exemption from an action for words uttered in the discharge of official duties being confined only to members of parliament and judges of the superior courts (*i*).

Action for words.

By 11 & 12 Vict. c. 44, s. 10, no action shall be brought in any County Court against a justice for anything done by him in the execution of his office, if he object thereto, and if, within six days after being served with a summons in any such action, he, or his solicitor or agent, give a written notice to the plaintiff, that he objects to being sued in such County Court for such cause of action, all proceedings afterwards had in such County Court in the action shall be null and void (*k*). It may also be added, that by 1 & 2 Vict. c. 74, s. 5, no action or prosecution lies against justices issuing a warrant under that act for delivering up the possession of tenements after due determination of the tenancy, nor against any officer by whom it has been executed, by reason that the person on whose application it was granted had not lawful right to the possession of the premises (*l*).

Not to be sued in County Court if he object thereto.

when not liable in respect of warrant for possession of tenements.

(*h*) See *post*, p. 402, as to limitation of action, notice of action and venue.

(*i*) *Allardice v. Robertson*, 1 Dow, 495. But an action will not lie against a magistrate for words spoken of a witness, in pronouncing

judgment. *Kendillon v. Maltby*, 2 Moo. & Rob. 438.

(*k*) See *Kirby v. Simpson*, 10 Exch. 358.

(*l*) See *Jones v. Chapman*, 14 M. W. 124.

SECT. 2.—*Of the Formalities in Actions against Justices.*

| | | |
|---|-----|--|
| 1. <i>In what County</i> | 402 | <i>Tender of Amends—continued.</i> |
| 2. <i>Limitation as to Time</i> | 402 | <i>When Notice of Action</i> |
| 3. <i>Notice of Action</i> | 404 | <i>necessary</i> |
| 4. <i>Tender of Amends</i> | 405 | <i>Form of</i> |
| | | 5. <i>Pleading General Issue</i> |
| | | 406 |
| | | 411 |
| | | 414 |

In what
county.

1. By the statute 21 Jac. 1, c. 12, s. 5, actions against magistrates, for any thing done in the execution of their office, could only be brought in the county in which the fact complained of was done. This act is now repealed, so far as it relates to this subject (*m*); but by s. 10 of 11 & 12 Vict. c. 44, in every such action the venue shall be laid in the county where the act complained of was committed (*n*); or in action in the County Court, the action must be brought in the Court within the district of which the act complained of was committed.

The right to local venue in actions against justices still survives, notwithstanding the general abolition of local venue by the Judicature Acts (*o*).

Limitation as
to time.

2. There are other provisions made by the legislature for the security of magistrates in the execution of their duty among which is the limitation of time within which actions can be brought against them.

By 11 & 12 Vict. c. 44, s. 8, no action shall be brought against any justice *for any thing done by him in the execution of his office*, unless such action be commenced within *six* calendar months next after the act complained of shall have been committed (*p*).

(*m*) 11 & 12 Vict. c. 44, s. 17.

(*n*) And see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. In such case, since the division of the county of Lancaster by stat. 3 & 4 Will. 4, c. 71, s. 4, the venue should be laid in "the northern" or "southern division" of the county, according to the division in which the cause of action arose; *Atkinson v. Hornby*, 2 C. & K. 335.

(*o*) O. XXXVI. r. 1. See *Thorpe v. Adams*, L. R., 6 C. P. 128; 40 L. J., M. C. 52.

(*p*) A similar provision was contained in 24 Geo. 2, c. 44, s. 8, now partially repealed by s. 17 of 11 & 12 Vict. c. 44; and see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. As to the meaning of the words "act complained of," see *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L.

Upon a similar clause it had been held, that the justice was answerable for such part of an imprisonment under his warrant as was within six calendar months of the commencement of the action, though the commitment was beyond that time (*q*).

In computing the six months, in an action against a justice for false imprisonment, where the imprisonment expired on the 14th December, and the writ was sued out on the 14th June following, it was held, that the former day was to be excluded, and that the action was therefore brought in time (*r*).

Under 53 Geo. 3, c. 127, s. 12, which requires the action for anything done in pursuance of it to be brought within three calendar months after the *fact committed*, it was held, that an action for taking and selling plaintiff's goods under a warrant of distress for arrears of church-rate, might be brought within three calendar months of the *sale* (*s*), *Parke*, B., there said, "the statute directs the arrears to be levied by distress and sale, and the 'fact committed' under colour or in pursuance of the statute, is not merely the seizure, but the sale also. The seizure of the goods is made not absolutely, but with a view to their detention only until the amount should be paid, and their subsequent sale if it should not; and the seizure, when the sale has taken place, is but part of the entire act complained of, and which forms the real grievance to the plaintiff: and, in this circumstance, distinguishes the present case from those of *Godin v Ferris* (2 H. Bl. 14); *Saunders v. Saunders* (2 East, 254); and *Crook v.*

J., M. C. 71; *ante*, pp. 65, 298. An action brought against one of the magistrates of the police courts of the Metropolis must be commenced within three calendar months after the act committed; see 2 & 3 Vict. c. 71, ss. 52, 53; see *Breeze v. Jerdein*, 4 Q. B. 585.

(*q*) *Massey v. Johnson*, 12 East, 75, 76; Bull, N. P. 24, on 24 Geo. 2 c. 44, s. 8, *ante*, p. 65, n. (*t*). See

Eggington v. The Mayor, &c. of Lichfield, 5 El. & Bl. 100; 24 L. J., Q. B. 360, and cases there cited.

(*r*) *Hardy v. Ryle*, 9 B. & C. 603; 4 Man. & Ry. 295; 2 Man. & Ry. Mag. Ca. 301, and see *ante*, p. 65; *Collins v. Rose*, 5 M. & W. 194.

(*s*) *Collins v. Rose*, *supra*; and see *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121.

M'Tavish (1 Bing. 167); in all which the seizure was for a forfeiture, and was in its nature absolute, and must be considered as intended to deprive the plaintiff of his property immediately."

The suing out of the writ is the commencement of the action. But where a writ had been sued out in time, but not served or returned, an *alias* writ out of time could not, it was held, be connected with the first by continuance, so as to support the action (*t*). Unless the record shows that the action was brought in proper time, the plaintiff must produce the writ of summons in evidence (*u*)

Notice of
action.

3. For the further security of justices, it is provided by 11 & 12 Vict. c. 44, s. 9, "That no action shall be commenced against any such justice (*x*) until one calendar month at least after a *notice in writing* of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his solicitor or agent, in which said notice the cause of action, and the Court in which the same is intended to be brought (*y*), shall be clearly and explicitly stated; and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said solicitor or agent, if such notice have been served by such solicitor or agent" (*z*).

By section 12, this notice must be proved on the trial; and, in default of proof, the plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

(*t*) *Weston v. Fournier*, 14 East, 492; see *Mayhew v. Locke*, 2 Marsh. 377; 7 Taunt. 63.

(*u*) *Johnson v. Smith*, 2 Burr. 964; *Cox v. Painter*, 6 A. & E. 491. The statement of claim now always specifies the date of the issuing of the writ of summons, by which the action was commenced, and subject to amendment, is conclusive as to that date. See Roscoe's N. P. Evidence.

(*x*) *I.e.* any justice of the peace for anything done by him in the execution of his office; *Kirby v. Simpson*, 10 Exch. 358.

(*y*) See Tidd's Prac., 9th edition, 80; *R. v. Biggs*, 3 P. Wms. 419.

(*z*) This is the same in substance as the provisions in the partially repealed act, 24 Geo. 2, c. 44; see also 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71.

And by section 11, the justice, at any time after such notice given, and before the commencement of the action, may *tender amends* to the party complaining, or his solicitor or agent, and the justice also at any time before issue joined, if he has not made such tender, or in addition to such tender, may pay money into Court, which tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue (a); if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, or beyond the sums so tendered and paid into Court, they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much as shall be sufficient to satisfy the defendant's costs, shall thereupon be paid out to him, and the residue, if any, shall be paid to the plaintiff. If, where money is so paid into Court, the plaintiff elect to accept the same in satisfaction, he may obtain from any judge of the Court in which the action is brought, an order for the money to be paid out to him, and the defendant shall pay him his costs, to be taxed, and thereupon the action shall be determined, and the order shall be a bar to any other action for the same cause. The sum tendered need not be paid into Court, and, therefore, unless the plaintiff accepts it at the time of tender (which he may do, and go for more), he may lose the sum tendered altogether (b).

By the same section, the justice is allowed to pay money into Court, if he has neglected to tender amends, or has tendered insufficient.

(a) See *Thompson v. Jackson*, 1 M. & S. 246, n.; *Cave v. Mountain*, *Id.* 257, n.; 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71. And where payment of money into Court was pleaded specially, justices were not bound to state the character in

which they made the payment; *Aston v. Perkes, and another*, 15 M. & W. 385; and see *Jones v. Gooday*, 9 *Id.* 736; *Thompson v. Sheppard*, 24 L. J., Q. B. 5.

(b) *Jones v. Gooday*, 9 M. & W. 736.

Time of
notice, how
reckoned.

The *month* is to be calculated exclusively both of the day of the notice, and of the day of commencing the action (c); if given on the twenty-eighth of a month, the action may be commenced on the twenty-ninth of the following one, whatever the length of the preceding month (d). The notice may be given before the quashing of the order, the act done being the cause of action; although the action itself cannot be brought until after the order is quashed (e).

When neces-
sary.

Wherever the act complained of is one which has been done by a magistrate, intending to act as such, however mistaken, upon a subject-matter within his jurisdiction, he is entitled to a notice under this act (f). And although the subject-matter of complaint may arise out of the local jurisdiction of the justice, yet if he has authority over the subject-matter, he is still entitled to notice (g).

The same doctrine was also laid down in the following case of a person convicted of riding on the shafts of his cart on the king's highway. It appeared that at the time the man was on the shafts, his cart was standing still, and consequently the case was not within the statute, inasmuch as the cart was not in motion; but he was nevertheless convicted by the justice; and the question was, whether the justice was entitled to notice of action. The Court said, it was immaterial whether the justice had a right, or not, to act in the way complained of; for if he had a right to act at all, he was clearly entitled to notice (h).

(c) *Young v. Higgon*, 8 Dowl. 212; 6 M. & W. 49, S. C.; ante, p. 65.

(d) *Freeman v. Read*, 4 B. & S. 174; 32 L. J., M. C. 226.

(e) *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67.

(f) In an action against a justice for committing the mother of a bastard child by his *single* warrant, the statute 18 Eliz. c. 3, requiring it to be by *two*, it was held, that he

was entitled to notice within the 24 Geo. 2, c. 44; *Weller v. Toke*, 9 East, 364. In *Styles v. Cox*, Vaughan, 111, justices and officers of peace, however wrong, were held to be within the privilege of 21 Jac. 1, c. 12.

(g) *Prestidge v. Woodman*, 1 B. & C. 13; 2 D. & R. 43; 1 D. & R. Mag. Ca. 502.

(h) *Bird v. Constable*, 2 D. & R. 45, n. (a); S. C. by the name of *Bird*

And notwithstanding the privilege of a justice of the peace cannot be claimed where the act is altogether *alio intuitu*, yet, if it be upon a matter within the general jurisdiction of justices of the peace, one, who is in fact such, will be presumed to have acted in that character, so as to entitle him to the privileges of the statute. Thus, a lord of a manor, who was also a justice of peace, was held to be entitled to notice, previous to an action brought against him for taking a gun in the house of an unqualified person; for it was intended, that he acted as a justice of the peace, according to the powers given by the act, then in force, of 5 Ann. c. 14 (i).

The law then, as to the right to notice of action, seems to depend on these two points: first, whether the magistrate has jurisdiction over the subject matter; and, secondly, whether he was *bonâ fide* acting as a magistrate at the time he did the act complained of; and this last question is a proper one for the consideration of the jury (k).

Thus, where a magistrate, after a disturbance on the liberation of a prisoner, had seized the plaintiff by the collar, and detained him until a constable came up, who told the magistrate that the plaintiff was not one of the persons engaged in the riot,—which was, in fact, then taking place at some distance, but there was no disturbance near the spot,—it was held, that it was a question for the jury, whether the defendant was acting *bonâ fide* as

v. *Ganston*, 2 Chitt. 459. In a case where two parties were jointly convicted before two justices of an assault, and a *joint* fine imposed on them, and the conviction for this cause held bad in substance, the reporters in their marginal note add, that the justices were not entitled to the protection of the 24 Geo. 2, c. 44, in an action of trespass for levying the amount; but this point does not, in the report of the case itself, appear to have been

in any way raised either in the argument of the counsel, or the judgments pronounced from the bench; *Morgan v. Brown*, 6 Nev. & M. 57; and it is omitted in another report of the same case, see 4 A. & E. 515.

(i) *Briggs v. Evelyn*, 2 H. Bl. 114.

(k) *Cox v. Reid*, 13 Q. B. 558; see per Parke, B., *Kirby v. Simpson*, 10 Exch. 358.

a magistrate, or not ; and if not, he was not entitled to notice of action (*l*).

But it is not because a justice may have no defence to the action, that he is not entitled to notice. For where a magistrate seized the plaintiff's goods, alleging at the time that they were stolen, and it was found that he acted *bondâ fide* under that impression, and believed that he was acting in the execution of his duty : it was held, that he was entitled to notice of action, although the jury found that he had no reasonable ground to suppose the property had been stolen (*m*).

The object of the statute, however, is to protect justices accidentally committing an error in the discharge of their duties, and not where the thing is done for their own personal benefit. Therefore, where the mayor of an ancient borough, being also a justice of the peace, took a fee of four shillings from a publican resident within the borough for renewing his licence ; although it appeared that, for sixty-five years, a similar fee had been uniformly received by the mayor for the time being from every publican within the borough applying to have his licence : it was held that such fee was illegal, and might be recovered back in assumpsit for money had and received, without notice of action ; for the fee, being taken by the mayor for his own personal benefit, could not be considered as being done in the execution of his office, for this was confined to the granting of the licence (*n*).

And where the defendant has no legal authority to act as a justice of the peace, he is, of course, not entitled to notice of action. By the charter of a borough, the aldermen had power and authority to execute by themselves, or, in their absence, by their deputies, the office of aldermen ; and by a clause in the charter, the aldermen for the

(*l*) *James v. Saunders*, 10 Bing. 429 ; 4 Moo. & S. 316.

(*m*) *Wedge v. Berkeley*, 1 Nev. & P. 665 ; *post*, p. 411.

(*n*) *Morgan v. Palmer*, 2 B. & C. 729 ; 4 D. & R. 433 ; 2 D. & R. Mag. Ca. 232.

time being were constituted, while they remained in office, keepers and justices of the peace in the borough. The defendant had been appointed deputy to one of the aldermen; and it was contended, that under this appointment he had power and authority to act not only as an alderman, but as a justice of the peace, and was therefore entitled to notice of action under the statute. But it was held, that although an alderman might appoint a deputy alderman, he could not appoint a deputy justice; and that the defendant, therefore, was not entitled to notice (o).

With regard to these statutory protections in general, it may be remarked, that they suppose an illegality, as otherwise no protection would be needed (p). They are meant for the protection of honest persons, who *bond fide* mean to discharge their duty (q), and these provisions should be construed liberally, in conformity with this object (r).

The reasonableness of the belief is properly taken into consideration in determining whether there was a *bond fide* belief of acting in pursuance of authority; but otherwise it is immaterial, the real question being, Did the de-

(o) *Jones v. Williams*, 3 B. & C. 762; 5 D. & R. 654; 2 D. & R. Mag. Ca. 537. See per Parke, B., *Hughes v. Buckland*, 15 M. & W. 356; *Bush v. Green*, 4 Bing. N. C. 41; *Lidster v. Borrow*, 9 A. & E. 654; *Downing v. Chapel*, L. R., 2 C. P. 461; 36 L. J., M. C. 97.

(p) *Hazeldine v. Grove*, 3 Q. B. 997, 1006; *Barnett v. Cox*, 9 Q. B. 617; *Read v. Coker*, 13 C. B. 850; 22 L. J., C. P. 201, S. C.

(q) Per Parke, B., in *Jones v. Gooday*, 9 M. & W. 743, or as Mr. Baron Alderson said in another case, "The object of the Act of Parliament is to protect honest ignorance;" *Horn v. Thornborough*, 18 L. J., Exch. 351; 3 Exch. 846. S. C. In *Kirby v. Simpson*, 10 Exch. 353, it was held, that a magistrate acting in the execution of his office was entitled to notice of action under 11 & 12 Vict. c. 44,

s. 9, in an action on the first count of that statute, alleging malice and the absence of reasonable and probable cause, but founded upon an act done by him as a magistrate, Parke, B., saying, "the plaintiff in this action proceeds against the defendant solely in his character as a magistrate, and a notice of action is required by the statute, that the magistrate may have the opportunity of tendering amends. I may add that these observations apply only to this statute (11 & 12 Vict. c. 44) and not to those cases which may rise under various acts of Parliament affording protection to persons who act under a *bond fide* belief that they are acting under the provisions of the particular act, which is supposed to give them authority."

(r) *Smith v. Hopper*, 9 Q. B. 1005.

fendant honestly intend to put the law in force, and really believe that the plaintiff had committed the offence imputed to him, although there was no reasonable cause for such belief (s). The question has been thus succinctly stated—Did the defendant honestly believe in the existence of such a state of facts as would, if it had existed, have afforded a justification? (t).

In a case where a justice of the peace had made an order for the examination by a medical man of a woman charged with having concealed the birth of her illegitimate child, there being no authority at common law or by statute to make the order, it was held that such justice was not entitled to notice of action, inasmuch as though he might have acted *bonâ fide* in the belief that he had authority to make the order for the woman's examination, there was nothing in fact on which he could ground such belief (u).

In order to entitle a party to notice of action, it is not necessary that he should, at the time of acting, be cognizant of the statute giving him the privilege (x). It is for the judge to decide whether a notice of action is necessary (y).

The question of *bona fides* is, it seems, for the jury (z),

(s) *Hermann v. Seneschal*, 32 L. J., M. C. 43; *Wedge v. Berkeley*, 1 Nev. & P. 665.

(t) *Hermann v. Seneschal*, *supra*, and *Roberts v. Orchard*, 33 L. J., Exch. 65 (Exch. Ch.); see also *Hazeldine v. Grove*, 3 Q. B. 1007; *Smith v. Hopper*, 9 Q. B. 1005; *Thomas v. Stephenson*, 2 E. & B. 108; *Arnold v. Hamel*, 9 Exch. 405; and as to the construction put upon the words "in pursuance," or "in execution of the act;" or "found committing an offence," *Read v. Coker*, 13 C. B. 850; *Horley v. Rogers*, 2 El. & El. 674; 29 L. J., M. C. 140; 24 & 25 Vict. c. 96, ss. 103, 113, and c. 97, ss. 61, 71; see 8 Q. B. 18, n. (h), and cases there cited, *ante*, p. 102, and *post*, p. 432;

Davis v. Curling, 8 Q. B. 286; *Read v. Coker*, 13 C. B. 850; *Booth v. Clive*, 10 C. B. 827; *Kent v. The Great Western Railway Company*, 3 Id. 714; *Bartholomew v. Carter*, 4 M. & G. 612; *Norris v. Smith*, 10 A. & E. 188; *Shatwell v. Hall*, 2 Dowl. (N. S.) 567; *Kine v. Evershed*, 10 Q. B. 148. As to term "*bonâ fide*" in an act, see *Robinson v. Purday*, 16 M. & W. 24.

(u) *Agnew v. Jobson*, 47 L. J., M. C. 67; 42 J. P. 424.

(x) *Read v. Coker*, 13 C. B. 850.

(y) *Kirby v. Simpson*, 10 Exch. 358.

(z) *Cox v. Reid*, 13 Q. B. 558; *Panton v. Williams*, 2 Q. B. 169; *Smith v. Hopper*, 9 Id. 1009; but

although it is often submitted to the judge as a ground of nonsuit; and if, in such case, the plaintiff does not desire the matter to be submitted to the jury, he must abide by the decision of the judge, if the Court think it warranted by the evidence (a).

The notice must be precise in complying with the ^{Form of the} directions of the act (b). The statute, it has been de- ^{notice.} clared, was made to introduce a strictness of form, in favour of magistrates; it must, therefore, be observed literally, and admits of no equivalent (c).

The former act, 24 Geo. 2, c. 44, required that the notice should contain two things, viz., the writ or process, and the cause of action (d). The statute now in force upon the subject (11 & 12 Vict. c. 44, s. 9) requires the cause of action, and the Court in which the action is to be brought, to be stated. In stating the cause of action it is sufficient to inform the defendant substantially of the ground of complaint (e). If the cause of action be under the 1st section of 11 & 12 Vict. c. 44, the notice should state that the act was committed *maliciously*, and without reasonable and probable cause (f). It should

see *Kirby v. Simpson*, 10 Exch. 858; 23 L. J., M. C. 165, S. C. : *Arnold v. Hamel*, 9 Exch. 404. As to *bona fides* in the owner of property under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30 (now repealed by 24 & 25 Vict. c. 95, but re-enacted in this respect by sect. 71 of 24 & 25 Vict. c. 97), entitling him to notice of action, see *Horn v. Thornborough*, 3 Exch. 846; *Parrrington v. Moore*, 2 Id. 223; *Hughes v. Buckland*, 15 M. & W. 346; *Reed v. Cowmeadow*, 6 A. & E. 661; *Wedge v. Berkeley*, Id. 663; *Cann v. Clipperton*, 10 Id. 582; *Rudd v. Scott*, 2 Sc. N. R. 631; *Kine v. Evershed*, 10 Q. B. 143. *Bona fides*, although entitling to protection, does not of itself amount to a defence, unless expressly so declared by statute; see *Stamp v. Sweetland*, 8 Q. B. 13; *Prickett v. Gratrex*,

Id. 1020; *Thomas v. Stephenson*, 2 El. & Bl. 108; 11 & 12 Vict. c. 44, s. 2.

(a) *Hazeldine v. Grove*, 3 Q. B. 997, 1006; *Barnett v. Cox*, 9 Id. 617.

(b) Per Lord Kenyon, 7 T. R. 835.

(c) Per Curiam, *Taylor v. Fenwick*, cited 7 T. R. 635.

(d) 7 T. R. 634; and see *Robson v. Spearman*, 3 B. & A. 493; *Gimbert v. Coyney*, 3 D. & R. Mag. Ca. 323; *Prickett v. Gratrex*, 8 Q. B. 1021; *Hollingworth v. Palmer*, 4 Exch. 267.

(e) *Jones v. Bird*, 5 B. & Ald. 837; 1 D. & R. 497.

(f) *Taylor v. Nesfield*, 3 El. & Bl. 724; 23 L. J., M. C. 169; 18 Jur. 747; S. C.; *Tarrant v. Baker*, 14 C. B. 199.

specify the place where the act complained of was committed (*g*). It has been held sufficient to state the imprisonment to have been in "a certain common gaol or prison in the borough of Monmouth" (*h*), or "at the parish of —, in the borough of —" (*i*).

The notice, according to the act (*k*), must be given by the party intending to commence the action, or by his solicitor or agent; and the name and place of abode of the party intending to sue, and also the name of the solicitor or agent, together with his place of abode or business (where the notice has been served by a solicitor or agent), are required to be indorsed on the notice. Under this regulation, it is sufficient, as regards the solicitor, for him to describe himself of the town where he resides, as "of Birmingham" (*l*); or of the place where he carries on his business, although he resides elsewhere (*m*). The place, however, from which the notice is dated must be so mentioned as to intimate that it is the place of the solicitor's residence or business. Therefore, a notice signed by the solicitor in this manner, "given under my hand at Durham," was held to be defective, in not expressing sufficiently that Durham was the place of the solicitor's residence, as the statute requires (*n*). So, where the solicitor described himself in the notice, of a certain place, as "in *London*," which was in fact *Westminster*, this was deemed a fatal objection (*o*). The signature of the solicitor to the notice need not set out the

(*g*) *Martins v. Upcher*, 3 Q. B. 662; *Breese v. Jerdein*, 4 *Id.* 585; *Jacklin v. Fytche*, 14 M. & W. 381.

(*h*) *Prickett v. Gratrex*, 8 Q. B. 1021.

(*i*) *Leary v. Patrick*, 15 Q. B. 266.

(*k*) *Ante*, p. 404.

(*l*) 3 B. & P. 551. In actions against officers of excise, the 23 Geo. 3, c. 70, s. 30, required the name and place of abode of the solicitor to be specified in the

notice; under this act, a notice signed "*Downe and Cox, Furnival's Inn*, attorneys for the plaintiffs," was held to contain a sufficient designation of their residence; *Wood v. Folliott*, 3 B. & P. 522, n.

(*m*) *Roberts v. Williams*, 5 Tyr. 583; 2 Cr., M. & R. 561; 4 Dowl. 486, S. C.

(*n*) *Taylor v. Fenwick*, cited 7 T. R. 635.

(*o*) 6 Esp. Ca. 138.

christian name at length, the initial is sufficient (*p*). It is no objection to the notice that a different person appears to be the solicitor on the record (*q*), or that it has been indorsed by a firm, the solicitor on the record being one member of the firm (*r*); or that it has been signed by the plaintiff, indorsed by the solicitor, and served by the solicitor's clerk (*s*). The party may be described in the notice as what he really is, *e.g.* a dealer, although he is described in the commitment as a labourer (*t*). Where it was given on behalf of two parties, one of whom was dead at the time, it was held to be bad (*u*).

As the action is confined by the statute to the cause of action contained in the notice, and the action, by sect. 8, must be commenced within six calendar months after the act complained of, it must necessarily be brought within six months of the notice. Therefore, where the writ upon which the action was founded was more than six months after the notice, the action failed, although there had been a prior writ issued in time, but never served, or returned so as to be capable of being continued, and though there had been a continuing cause of action to the time of suing out the second writ (*x*); for, in that case, the first writ, which was in time, would not support the declaration,—and the subsequent cause of action, to which the second writ might apply, was not included in the notice. But where a notice of the intended process and cause of action was duly served; and the plaintiff, having issued a writ of *quo minus* against the justice only, in a few days abandoned that writ, and issued another against the jus-

(*p*) *James v. Swift*, 4 B. & C. 681; 6 D. & R. 625; 3 D. & R. Mag. Ca. 302.

(*q*) *Roberts v. Williams*, *supra*; and see where notice was given by a *prochein amy* for an infant, and a different one appeared on the record, *De Gondouin v. Lewis*, 10 A. & E. 117.

(*r*) *Hollingworth v. Palmer*, 4

Exch. 267.

(*s*) *Morgan v. Leach*, 10 M. & W. 558.

(*t*) *Mason v. Barker*, 1 C. & K. 100.

(*u*) *Pilkington v. Riley*, 3 Exch. 739.

(*x*) *Weston v. Fournier*, 14 East 491.

tice and the constable: it was held, that the notice was sufficient to warrant the latter writ and the proceedings thereupon (*y*).

The act of 2 Geo. 3, c. 28 (the Bum-boat Act), which gave protection to justices in cases of actions brought on account of anything done by them in pursuance of that act, has been held not to deprive them of the right to the notice of action required by the 24 Geo. 2, c. 44; and therefore the notice of action on the former statute was required to be conformable to the notice required by the last-mentioned act (*z*).

The reason of requiring notice of action was, to give the defendant an opportunity of tendering amends, which he is enabled to do by the eleventh section of the act (*a*).

Pleading
general issue.

By the statute 11 & 12 Vict. c. 44, s. 10 (following in substance 21 Jac. 1, c. 12, s. 5), in any action against justices of peace, for any matter done in execution of their office, they may plead the general issue, and give the special matter in evidence. The Judicature Acts reserve the right of a defendant to plead "not guilty by statute," and provide that the defence shall have the same effect as the plea of "not guilty by statute" previously had (*b*). In the margin of the pleading, the words "by statute," together with a reference to the act and a statement that it is a public or a private act (as the case may be) must be inserted (*c*).

The plea of tender of amends, under 24 Geo. 2, c. 44, must have been pleaded specially, and was allowed to be pleaded, together with the general issue (*d*); but now, as we have seen, it may be given in evidence under the general issue by 11 & 12 Vict. c. 44, s. 9.

(*y*) *Jones v. Simpson*, 1 Cr. & J. 174; 1 Tyr. 32.

(*z*) *Rogers v. Broderip*, 9 D. & R. 194; 4 D. & R. Mag. Ca. 123.

(*a*) *Ante*, p. 405; and see *Robson v. Spearman*, 3 B. & Ald. 493.

(*b*) O. XIX. r. 12.

(*c*) O. XXI. r. 19.

(*d*) *Ante*, p. 405.

SECT. 3.—*Of Evidence, Damages and Costs in Actions against Magistrates.*

| | | | |
|------------------------------|-----|--|-----|
| 1. <i>Evidence</i> | 415 | 3. <i>Costs of justices payable out of county fund</i> | 418 |
| 2. <i>Damages</i> | 416 | | |

We have already considered what is incumbent on the plaintiff to prove in an action against a magistrate for acts done in the execution of his office (*e*), and how far proof of a subsisting conviction protects the magistrate (*f*).

In trespass against the mayor of a borough for having issued a warrant, under 5 & 6 Will. 4. c. 76, for the levying of a borough rate, the plaintiff, in order to prove the warrant, called as a witness the high constable of the borough, who had been served with a *subpœna duces tecum*; he stated that he had deposited it in his office, had searched there, but could not find it; did not know what had become of it, and that the town clerk had access to his office. It was held, that secondary evidence might thereupon be given of the contents of the warrant (*g*), although a notice to produce the warrant had not been served on the defendant, nor had the town clerk been served with a *subpœna duces tecum*. In an action against a magistrate for false imprisonment, under a warrant, proof that the signature to the warrant is in the handwriting of the defendant is *prima facie* evidence against him that the warrant was issued by him (*h*); and if the warrant be put in evidence by the plaintiff, the defendant may use a recital in it of an information on oath, in consequence of which the warrant was granted by him as evidence of that fact, although the warrant has been quashed (*i*).

Where the warrant recited a conviction, adjudging the defendant to pay a penalty and a sum for costs, and

(*e*) *Ante*, p. 386.

(*f*) *Ante*, p. 390. See also Taylor, *Ev.* (8th ed.), p. 1424.

(*g*) *Fernley v. Worthington*, 1 M. & G. 491.

(*h*) *Mason v. Barker*, 1 C. & K.

100.

(*i*) *Haylock v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67; 17 Jur. 731, S. C., and see the cases there cited.

directed them to be levied by distress, but the conviction drawn up and given in evidence was silent as to costs, and there was no evidence that in fact the justices had adjudicated upon them, the warrant was held to afford no justification for the seizure of the plaintiff's goods or the detainer of his person (*k*). In an action against a magistrate and a constable, for false imprisonment, evidence of what passed before the magistrate was held admissible as part of the alleged illegal transaction, but what was said by the constable before any joint act proved was held not admissible (*l*).

The commencement of the action appears by the record, or if the date of the writ be omitted in the record, it may be proved by the production of the original writ of summons (*m*).

Damages.

Where a magistrate committed a person to prison, in a case in which he had no jurisdiction, he was held by *Erskine, J.*, at *Nisi Prius*, to be liable for all the circumstances that usually attend the execution of a warrant of commitment, such as the party being handcuffed, and having his hair cut short in the prison, but not for violence or excess on the part of the officer (*n*).

By sect. 13 of 11 & 12 Vict. c. 44, in all cases where the plaintiff in any such action shall be entitled to recover, and shall prove the levying or payment of a penalty or sum of money under any conviction or order as parcel of his da-

(*k*) *Leary v. Patrick and another*, 15 Q. B. 266. The acts were held to be in excess of jurisdiction within 11 & 12 Vict. c. 44, s. 2. See also 11 & 12 Vict. c. 43, s. 18, and *ante*, p. 393.

(*l*) *Edwards v. Farris*, 7 C. & P. 542.

(*m*) *Cox v. Painter*, 6 A. & E. 491; *Haylock v. Sparke*, *supra*,

(*n*) *Mason v. Barker*, 1 C. & K. 100; but see *Cave v. Mountain*, 1 M. & G. 25, *ante*, p. 389. The principle of constructive or actual knowledge of consequences is ap-

plied to the measure of damages in actions of contract, *Hadley v. Baxendale*, 9 Exch. 341; see *Barton v. Bricknell*, 20 L. J., M. C. 2, n. (8); *Foxhall v. Barnett*, 23 L. J., Q. B. 7; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121, 127, as to recovering by way of special damage the costs of quashing the conviction. See *Mason v. Barker*, as to including in damages the amount of the penalty which had been paid by the plaintiff.

damages, or that he was imprisoned, and therefore seeks to recover damages, he shall not recover the amount of such penalty or sum so levied or paid, or any sum beyond two-pence as damages for such imprisonment (o), or any costs, if it shall be proved that he was actually guilty of the offence, or liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted.

By 11 & 12 Vict. c. 44, s. 14, if the plaintiff recover a Costs. verdict, or defendant allow judgment to go by default, the plaintiff shall be entitled to costs as if this act had not passed; or if it be stated in the declaration, or in the summons and particulars in the County Court that *the act was done maliciously, and without reasonable and probable cause*, the plaintiff, if he recover a verdict for any damages, or if defendant let judgment go by default, shall be entitled to his full costs of suit, *to be taxed as between solicitor and client*; and the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs as between solicitor and client.

The statute 24 Geo. 2, c. 44, having by sect. 6 enacted, that the constable or officer executing the warrant should not be sued but in conjunction with the justice, provides, with regard to the costs in such joint action, that if the jury find a verdict for the constable,—as they are bound to do on production of the warrant,—and shall find a verdict against the justice; in such case the plaintiff shall recover his costs against the justice, to be taxed in such manner as to include the costs the plaintiff is liable to pay to the defendant, for whom a verdict has been found.

The plaintiff's right to costs under the above statute is, as we have just seen, further restricted in cases coming within the 13th section of 11 & 12 Vict. c. 44, which

(o) *Quære*, when the action is for 20 L. J., M. C. 2, n. (3).
seizing goods? *Barton v. Bricknell*,

enacts, that in those actions to which it extends, the plaintiff shall not be allowed any costs whatever, if it shall be proved that he was guilty of the offence of which he was convicted, or liable to pay the sum ordered, and did not undergo any greater punishment, by way of imprisonment than that assigned by law (p).

Costs of
justices
payable out
of county
fund.

By the Local Government Act, 1888, all costs incurred by the quarter sessions, or the justices out of sessions of a county, and all costs incurred by any justice, police officer, or constable, in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, police officer, or constable shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly (q).

SECT. 4.—*Information against a Magistrate for wrongful Conviction.*

| | | | |
|------------------------------------|-----|---------------------------------------|-----|
| 1. <i>When granted</i> | 418 | 4. <i>Exculpatory Affidavit</i> . . . | 422 |
| 2. <i>When moved for</i> | 422 | 5. <i>Defendant appearing for</i> | |
| 3. <i>Costs</i> | 422 | <i>Judgment</i> | 423 |

When
granted.

If the misconduct of magistrates, besides being productive of private injury, be such as to call for punishment upon public grounds,—as where it proceeds, not from error, but from private interest or resentment,—the Queen’s Bench Division will direct an information to be filed by the officer of the Court against the offender, upon a proper application supported by affidavits.

But an information is never granted for an irregularity arising merely from ignorance or mistake (r).

(p) *Ante*, p. 417. (r) See Lord Mansfield’s judgment, *R. v. Cozens*, Doug. 426
(q) 51 & 52 Vict. c. 41, s. 66.

An information, however, has been granted for convicting, without any previous summons (s), and for refusing sufficient bail, in a bailable misdemeanor, on account of the personal character and opinions of the parties tendered as bail (t).

And on a motion for an information (u) against a justice for not having stated the defendant's evidence in a conviction, when it was necessary to do so,—though the Court refused the rule, upon the ground that the magistrate might have been misled by the authority of a former decision upon a similar conviction,—it at the same time expressed so strong an opinion upon its being clearly the duty of a magistrate to set out all the evidence fairly, as to induce the conclusion that, but for the ground of palliation, the information would have been granted.

The grounds upon which the Court may think it proper to interfere are too indefinite to admit of any fixed rule; but, in general, it may be stated, that wherever the powers vested in justices for the summary execution of penal laws are exerted from corrupt or personal motives, this mode of punishment will be extended.

But an irregularity, however great, unless it partakes of those motives, will not be visited in this way. Thus, where an information was moved for against two justices of the peace and others, for a misdemeanor, relating to the conviction of a poacher, the Court, upon consideration of the circumstances attending it, discharged the rule with costs to be paid to *the justices*, but without costs to the others; and the Court were, upon this occasion, most explicit in their declaration, “that, even where a justice

and *R. v. Fielding*, 2 Burr. 720. It will not be granted *on behalf* of a magistrate, for unwritten words imputing to him malversation in his office, if the words were not spoken at the time when he was acting, and did not tend to a breach of the peace; *Ex parte Duke of Marlborough*, 5 Q. B. 955; and see *R. v. Burn*, 7 A. & E.

190.

(s) *R. v. Allington*, 1 Str. 678; see the circumstances stated, *R. v. Venables*, 2 Ld. Raym. 1405; 1 Str. 640; see also *R. v. Harwood*, 2 Str. 1088.

(t) *R. v. Badger*, 4 Q. B. 468.

(u) *R. v. Lovet*, 7 T. R. 152.

of peace acts *illegally*, yet, if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or illegal intention whatsoever, the Court will not punish him by this extraordinary course of an information, but leave the party complaining to the ordinary legal remedy or method of prosecution, by action, or by indictment" (x). So, in the case of *R. v. Borron* (y), which was an application for an information against a magistrate, and refused, *Abbott*, C. J., in delivering the judgment of the Court, said, "they (the justices) are, indeed, like every subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But, whenever they have been challenged upon this head, either by way of indictment or application to this Court for a criminal information, the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right,—but from what motive it had proceeded; whether from a dishonest, oppressive, or corrupt motive, under which description fear and favour may generally be included, or from mistake or error. In the former case, alone, they have become the objects of punishment. To punish as a criminal any person, who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

In cases, however, where the public safety is at stake, a magistrate is punishable for gross neglect in the performance of his duties. Thus, where a justice is called upon to suppress a riot, he is required by law to do all he knows to be in his power, that can reasonably be expected from a man of honesty, and of ordinary prudence, firm-

(x) *R. v. Palmer*, 2 Burr. 1162; see also 1 T. R. 658, 692; 6 Mod. 228; 2 Ld. Raym. 1407; 2 Str. 678.

(y) 3 B. & Ald. 484; and see *R. v. Williamson*, *Id.* 582; *R. v. JJ.*

Staffordsh., 1 Chitt. 217; *R. v. JJ. Lancash.*, 1 D. & R. 485; 1 D. & R. Mag. Ca. 127; and *R. v. Constable*, 7 D. & R. 663; 3 D. & R. Mag. Ca. 488.

ness, and activity, under the circumstances. Mere purity of intention is, on such an occasion, no defence, if he fails in his duty. Nor is it a defence, that he acted upon the best professional advice that could be obtained on legal and military points, if his conduct has been faulty in point of law (z).

With the exception of *ex officio* informations filed by the Attorney-General on behalf of the Crown, no criminal information or information in the nature of a *quo warranto* shall be exhibited, received, or filed at the Crown Office Department without express order of the Queen's Bench Division in open Court, nor shall any process be issued upon any information other than an *ex officio* information, until the person procuring such information to be exhibited shall have filed at the Crown Office Department a recognizance in the penalty of 50*l.* effectually to prosecute such information and to abide by and observe such orders as the Court shall direct, such recognizance to be entered into before the Queen's coroner and attorney or the master of the Crown Office, or a justice of the peace of the county, borough, or place in which the cause may have arisen (a).

No criminal
information
without leave.

No application shall be made for a criminal information

(z) *R. v. Pinney*, 3 B. & Ad. 947. But in suppressing a riot he is not bound to head the special constables, or to arrange and marshal them; for this is the duty of the chief constable. Nor, if he calls upon soldiers to suppress a riot, is he bound to go with them in person; it is enough if he gives them authority. Neither is a magistrate criminally answerable for not having called out special constables, and compelled them to act, pursuant to 1 & 2 Will. 4, c. 41, unless it be proved, that information was laid before him on oath of a riot having occurred or being expected. Nor is he chargeable with neglect of duty, for not having called out the *posse comitatus*, in case of riot, if he has given the

queen's subjects reasonable and timely warning to come to his assistance. And where a magistrate applied personally to some of the inhabitants of a city, called at the houses of others, employed other persons to do the same, sent notices to the churchwardens (on a Sunday), to be published at the places of worship, requiring the people to meet the magistrates at a stated time and place in aid of the civil power, and for the protection of the city, and posted and distributed other notices to the like effect—this was held to be reasonable warning, the riot having recently broken out.

(a) Rule 46 of Crown Office Rules, 1886.

No criminal information against justice of the peace without notice.

against a justice of the peace for misconduct in his magisterial capacity unless a notice containing a distinct statement of the grievances, or acts of misconduct complained of, be served personally upon him, or left at his residence, with some member of his household, six days before the time named in it for making the application (b).

When moved for.

The application for a criminal information shall be made to a divisional court by a motion for an order *nisi*, within a reasonable time after the offence complained of, and if the application be made against a justice of the peace for misconduct in his magisterial capacity, the applicant must depose on affidavit to his belief that the defendant was actuated by corrupt motives, and further if for an unjust conviction, that the defendant is innocent of the charge (c).

Costs on acquittal, etc.

If the prosecutor on any information not *ex officio* does not proceed to trial within a year after issue joined, or if the prosecutor causes a *nolle prosequi* to be entered, or if the defendant be acquitted (unless the judge at the time of trial certifies that there was reasonable cause for the information), the Court, on motion for the same, may award the defendant his costs to the amount of the recognizance entered into by the prosecutor on filing the information (d).

The costs of the motion for an information are entirely in the discretion of the Court. And, in some cases, although the Court refuse the rule, yet, if the conduct of the magistrate has been irregular, they will discharge it, without ordering the complainant to pay the magistrate his costs (e). And, in a case where a motion was made against a justice, the Court, in discharging the rule, ordered him to pay all the costs of the application (f).

The Court will not hear a motion against a justice for

(b) Rule 47.

(c) Rule 48.

(d) Rule 49.

(e) *R. v. Fielding*, 2 Burr. 720.

(f) *R. v. Hoseason*, 14 East, 606; see *R. v. Dodson and others*, 9 A. & E. 704.

convicting without a summons until the conviction is brought up by *certiorari* (g).

In some special cases, also, the Court will require the party making the application to relinquish his civil action for the same cause (h).

After verdict upon the information, the defendant must appear in Court to receive judgment, unless some special reason be assigned by affidavit for dispensing with his appearance (i). Defendant must appear to receive judgment.

Nor is that sufficient, unless it be clear that the punishment will be only pecuniary; where that is the case, the personal attendance may be dispensed with (k).

(g) *R. v. Heber*, 2 Stra. 915; 2 Barn. 24.

(h) *R. v. Fielding*, 2 Burr. 720; as to the applicant having elected another remedy, see *R. v. Gwillt*, 11 A. & E. 587.

(i) *R. v. Harwood*, 2 Str. 1088; see *R. v. Canstable*, 7 D. & R. 663; 3 D. & R. Mag. Ca. 488.

(k) *R. v. Hann and another*, 3 Burr. 1786.

CHAPTER II.

OF ACTIONS AGAINST CONSTABLES (a), ETC., FOR ACTS
DONE IN EXECUTION OF CONVICTIONS.

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| 1. <i>Pleading General Issue</i> . . . 424 | 6. <i>In what Actions Demand</i> |
| 2. <i>Limitation of Time</i> . . . 424 | <i>necessary</i> . . . 428 |
| 3. <i>Protected by Warrant</i> . . . 426 | 7. <i>What acts protected</i> . . . 429 |
| 4. <i>Demand of Warrant</i> . . . 427 | 8. <i>What acts not protected</i> . . . 430 |
| 5. <i>When Furnished</i> . . . 428 | |

SECT. 1.—*Protection by Magistrate's Warrant.*

May plead
general issue.

THE constable, or other officer, executing the warrant of the convicting justice is, by 21 Jac. 1, c. 12, s. 5, entitled to the same privilege as the justice is, as to giving the special matter in evidence under the general issue (b), and as to the action being brought in the county where the fact was committed (c).

Limitation of
time.

Also, by 24 Geo. 2, c. 44, s. 8, the *time* of bringing an action against the constable, as well as an action against the justice, is limited to six calendar months; the intention of the legislature being, that both the constable and

(a) See as to the appointment and payment of parish constables, and the naming of substitutes, 5 & 6 Vict. c. 109; *R. v. Booth*, 12 Q. B. 884; 10 & 11 Vict. c. 89; appointment of metropolitan police constable, *Allan v. Preece*, 10 Exch. Rep. 443; 24 L. J., Exch. 9. Penalties being directed to be paid to the police superannuation fund, see 28 Vict. c. 35; election of chief constable, *R. v. Watkinson*, 10 A. & E. 288; as to protection under 1 & 2 Vict. c. 74 (for the recovery of small tenements), see *Jones v. Chapman*, 14 M. & W. 124; and *ante*, p. 401; as to the appre-

hension of offenders without warrant, see 24 & 25 Vict. c. 96, s. 103; and *ante*, p. 101.

(b) *Ante*, p. 414, O. XIX. r. 12 of Judicature Rules, 1883, reserves the right of a defendant to plead "not guilty by statute," and provides that the defence shall have the same effect as the plea of "not guilty by statute," previously had. See a special plea justifying under an order of sessions and warrant thereon, *Gay v. Matthews*, 32 L. J., M. C. 58.

(c) *Straight v. Gee*, 2 Star. 445; and see *ante*, p. 402.

the justice of the peace should be precisely in the same situation, with respect to the *time* in which such actions should be brought against them (*d*).

By the statute 2 & 3 Vict. c. 93, county and district constables may be appointed by justices of the peace, and by the conjoint effect of sect. 8 and of sect. 19 of 1 & 2 Will. 4, c. 41, they are entitled to notice of action if sued for any thing done in pursuance of the act (*e*).

An officer of police appointed under 2 & 3 Vict. c. 93, s. 8, who is sued for anything done in intended pursuance of the duties imposed and powers conferred upon him by the Contagious Diseases (Animals) Act, 1878, s. 50, is not entitled by virtue of 1 & 2 Will. 4, c. 41, ss. 5, 19, to notice of action and to have the action tried in the county where the alleged grievance has been committed; for, although 2 & 3 Vict. c. 93, s. 8, incorporates 1 & 2 Will. 4, c. 41, nevertheless the protection afforded by s. 19 of the last-named statute extends by force to s. 5 only to those cases, where a constable appointed under it is intending to act with the power and authority given to a constable by the common law or by some statute existing when 1 & 2 Will. 4, c. 41, was passed (*f*).

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 191 (2), provides that constables appointed for a borough "shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county

(*d*) Per Holroyd, J., *Parton v. Williams*, 3 B. & Ald. 340; and see *Smith v. Wiltshire*, 2 Brod. & B. 619; 5 B. Moore, 322; *Hendry v. Biers*, 2 D. & R. 9. These statutes of James 1 and Geo. 2 are repealed by 11 & 12 Vict. c. 44, s. 17, only so far as they relate to actions against *justices*. By s. 18 of 11 & 12 Vict. c. 44, it is enacted that that statute (11 & 12 Vict.) shall apply for the protection of all persons for anything done in the execution of their office in all cases in which, by the provision of any act or acts of parliament, the

several statutes or parts of statutes hereinbefore mentioned, and by this act repealed (viz.: 7 Jac. 1, c. 5; 21 Jac. 1, c. 12, s. 5; 24 Geo. 2, c. 44, ss. 1, 2 and part of s. 8, and 43 Geo. 3, c. 141) would have been applicable if this act had not been passed; and see 24 & 25 Vict. c. 96, s. 113, and c. 97, s. 71.

(*e*) But they are not entitled to notice of action in an action of replevin; *Gay v. Matthews*, 32 L. J., M. C. 58.

(*f*) *Bryson v. Russell*, 14 Q. B. D. 85.

being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has, and is liable to for the time being in his constablewick at common law or by statute"; and by sect. 226, all actions against any person, for any act done, in pursuance, or execution, or intended execution of the statute, must be commenced within six months after the act done, or after the ceasing thereof, in the case of continuing injury: the section also enables him to tender amends.

Protected by
warrant.

Before the provisions made for the security and protection of inferior officers, by the act of 24 Geo. 2, c. 44, they were placed in the hazardous predicament of being liable to indictment, if they refused to execute the warrants of justices of the peace, and to vexatious actions if they did (*g*). It was the object of that act to relieve them from this difficulty, and to substitute the magistrate,—by whom the warrant was granted, and who was supposed to be cognizant of the legality of it,—in lieu of the officer, who was merely the instrument to execute it, and who was, probably, ignorant of the grounds on which it issued.

As the law stood before, the distinction was, that if the justice had no authority in the matter, so that the conviction was *coram non judice*, and void, his warrant afforded no protection to the officer; but if the justice had jurisdiction in the matter, the officer was protected, provided the manner of the execution was legal, however erroneous the judgment might have been, and though the magistrate himself might be liable (*h*).

(*g*) See the observations of Mr. J. Lawrence, 5 East, 448, *Jones v. Vaughan*.

(*h*) *Terry v. Huntingdon*, Hard. 484; 1 Bac. Abr. tit. *Constable*, D.; *Hill v. Bateman*, 1 Str. 710; *Howard v. Gosset*, 10 Q. B. 587; *Watson v. Bodell*, 14 M. & W. 57; *Atkins v. Kilby*, 11 A. & E. 777;

Morrell v. Martin, 3 M. & G. 591; *Keane v. Reynolds*, 2 El. & Bl. 748. And see *Reg. v. Davis*, 30 L. J., M. R. 159. They were not liable where there was a general jurisdiction over the subject-matter; *Thomas v. Hudson*, 11 M. & W. 353; 16 *Id.* 884; *West v. Smallwood*, 3 *Id.* 420, unless a want of

But now, by the statute 24 Geo. 2, c. 44, s. 6, "no action shall be brought against any constable, headborough, or other officer, or against any person acting by his order, or in his aid, for any thing done in obedience to any warrant, under the hand and seal of any justice, until demand has been made or left at the usual place of his abode, by the party intending to bring such action, or by his solicitor (*i*) or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand. Demand of warrant.

"And in case, after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, &c., or against such person acting in his aid, for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants (*j*); on producing or proving such warrant on the trial of such action, the jury shall give their verdict for the defendant or defendants, *notwithstanding any defect of jurisdiction in such justice or justices* (*k*).

"And, if such action be brought jointly against such justice or justices, and also against such constables, &c.: then, on proof of such warrant, the jury shall find for such constable, notwithstanding such defect of jurisdiction as aforesaid" (*l*).

jurisdiction in the specific case appeared on the face of the warrant; *Howard v. Gosset*, *supra*, see *Caudle v. Seymour*, 1 Q. B. 889.

(*i*) If the demand be signed by the plaintiff's solicitor and left by his clerk, it is sufficient; *Clark v. Woods and others*, 2 Exch. 395.

(*j*) Where a person was wrongfully assessed and distrained upon for land-tax, it was held that he was not bound to join as defendants with the constable the com-

missioners who issued the warrant, the above section being inapplicable, although they were also magistrates for the division in which the warrant issued; *Charlton v. Alway*, 11 A. & E. 993.

(*k*) Though the warrant is granted without jurisdiction, the constable is entitled to protection under this section; *Atkins v. Kilby*, 11 A. & E. 777.

(*l*) See *Eggington v. The Mayor, &c., of Lichfield*, 1 Jur., N. S. 908.

Sufficient if
furnished
before action.

In the construction of this act it is held, that, although the plaintiff is restrained from bringing the action till after a neglect of six days to furnish a copy of the warrant, yet the defendant, the constable, is entitled to the benefit of the act, if, at any time *before* the action commenced, a copy of the warrant be furnished, though not till after six days from its being demanded (*m*). The mere fact, however, of the plaintiff's having obtained a copy of the warrant by other means, does not excuse the constable from complying with the demand (*n*).

But, although the officer is bound to show the warrant to, and permit a copy of it to be taken by, the party demanding the same, he is in no case required to part with the warrant out of his own possession; for that is his justification (*o*).

If the plaintiff's solicitor, previous to bringing the action, make out two papers precisely similar, purporting to demand a copy of the warrant, pursuant to the statute, and sign both for his client, and then deliver one to the defendant, the other will be evidence at the trial to prove the demand (*p*).

To what kind
of actions the
statute
applies.

The act is confined to actions of tort brought for the recovery of damages, and therefore it was held not to extend to an action of replevin, which is a proceeding *in rem* (*q*), nor to an action for money had and received

911; 24 L. J., Q. B. 360. The mere fact of the justices being joined does not entitle the constable to a verdict unless he has complied with the demand of the perusal and copy of the warrant; *Clark v. Woods and others*, 2 Exch. 395.

(*m*) *Jones v. Vaughan*, 5 East, 448.

(*n*) *Clark v. Woods and others*, 2 Exch. 395.

(*o*) 1 East, P. C. 319; *Atkins v. Kilby*, 11 A. & E. 777.

(*p*) *Jory v. Orchard*, 2 B. & P. 39.

(*q*) *Gay v. Matthews*, 4 B. & S. 425, 440; 32 L. J., M. C. 58;

Fletcher v. Wilkins, 6 East, 283; *Le Feuore v. Miller*, 26 L. J., M. C. 175. In the last cited case, it was held that non-publication of a rate (made under the then Public Health Act) did not make the rate void, and that on a summons to enforce the rate, which had not been published but also had not been appealed against, the justices were right in disregarding the non-publication, and that their warrant was a protection to the officer distraining under it. As to *prima facie* evidence of the due making and publication of a poor rate, see 32 & 33 Vict. c. 41, s. 18.

brought against an officer who had levied and sold a distress under a conviction which was afterwards quashed (*r*).

The act extends also to those cases only in which a warrant has been actually granted (*s*). But where there has been a warrant, in the execution of which the act complained of was done, it is a justification to the officers; and whether the warrant itself be legal or not, a demand of it is necessary under 24 Geo. 2, c. 44. Since that act, the jurisdiction of the magistrates cannot be tried in an action against the officers alone (*t*).

2. The condition of being entitled to the benefit of the statute is, that the officer, in what he did, was acting in obedience to the warrant (*u*); the object of the statute, as has been before observed (*x*), being to protect inferior ministers in those acts which their office obliged them to execute, at the risk of being answerable for the magistrate's want of authority, it follows, that the privilege attaches to no act but what is expressly within the exigency of the warrant. For this reason, it has been said, that wherever the magistrate could not be liable, the act does not apply (*y*).

What acts
protected by
the statute.

It was ruled by Lord *Mansfield*, in the case of an officer executing a warrant under the Vagrant act, that the officer was bound to show, not only the warrant, but also that he had acted in obedience to it (*z*). The same point had before been ruled by his lordship in another case tried before him (*a*). And, in the celebrated question upon the execution of general warrants, which was agitated in the case of *Money v. Leach* (*b*), it was insisted, besides the illegality of the warrants themselves, that the officers were not protected, because they had not acted in obedience and

(*r*) *Feltham v. Terry*, Bull. N. P. 24; see *Irving v. Wilson*, 4 T. R. 485; *Wallace v. Smith*, 5 East, 122; *Harper v. Carr*, 7 T. R. 270.

(*s*) 3 Esp. Cas. 226.

(*t*) *Price v. Messenger*, 2 B. & P. 158; 3 Esp. Cas. 96. See the observations of Eyre, C. J., 2 Wils.

291, and 4 Bl. Com. 291.

(*u*) 2 Burr. 1766.

(*x*) *Ante*, p. 426.

(*y*) Bull. N. P. 24.

(*z*) *Dawson v. Clark*, cited 3 Burr. 1767.

(*a*) *Id.*

(*b*) 3 Burr. 1742, 1767.

conformably to the exigency of the warrants. The cases and doctrine above mentioned being appealed to in confirmation of that argument, the Attorney-General, *Yorke*, gave up the case of the defendant upon that point, and admitted that the objection was a difficulty too great for him to encounter (c). Lord *Mansfield*, upon that occasion, confirmed his former direction, and added, that, where the justice cannot be liable, the officer is not within the protection of the statute (c).

Where constable is not protected.

For this reason, if the constable execute a warrant of seizure out of the magistrate's jurisdiction, he is not indemnified by the act : thus—

A warrant was granted by a justice of the county of *Kent*, directed to the constables of the lower half-hundred of *Chatham and Gillingham*, in the said county, and to the borsholders there. The defendants, who were borsholders of the district mentioned, having executed the warrant in a certain part of the parish of *Gillingham*, in the manor of *Grange*, lying within the liberties of the *Cinque Ports* (which for this purpose is a separate jurisdiction (d)), were held to be liable to an action of trespass, without joining the magistrate (e). But it was at the same time declared, that if the magistrate had directed the constable to execute his warrant within the manor of *Grange*, no doubt the constable would have been protected, though it had turned out that the manor of *Grange* was not within his jurisdiction (f). But the warrant being directed merely “to the constables of the lower half-hundred of *C. and G.*, in the county of *Kent*,”—if the officer took a distress in that part of the lower half-hundred of *C. and G.*, which did not lie within the county of *Kent*, but in another

(c) 3 Burr. 1767, 1768.

(d) By 18 & 19 Vict. c. 48, the separate jurisdiction of the Cinque Ports is abolished as regards civil proceedings, and provision is also made for bringing them within the jurisdiction of the county justices in other proceedings if on peti-

tion for that purpose her Majesty should so order. See Sects. 1, 3, 5, 10.

(e) *Milton v. Green*, 5 East, 233.

(f) 5 East, 237, per Lord Ellenborough.

jurisdiction, the warrant could no more justify going there to execute it, than if they had gone into the county of Suffolk (*g*).

And for the same reason, if the constable exceeds the authority given him by the warrant, he is not within the protection of the statute; as where certain officers, in order to levy a poor's rate under a warrant of distress granted by two magistrates, broke and entered the house, and broke the windows, &c.; it was held, that they might be sued in trespass, without a previous demand of the perusal and copy of the warrant according to the statute (*h*); for the justice in this case could not be liable for the excess of authority committed by the officers.

A greater latitude of construction, however, has been held to apply, in favour of the officer, to acts of parliament which impose restrictions on actions against officers, "for any thing done *in pursuance of the act*." Thus, where a constable, having a magistrate's warrant of distress to levy a church-rate, under the statute 53 Geo. 3, c. 127,—the 12th section of which requires any action "brought for any thing done *in pursuance of that act*" to be commenced within three calendar months after the fact committed,—broke open the outer door of the plaintiff's

(*g*) *Ib.* 236, note. Lord Kenyon, in an action of assault and imprisonment against a defendant, who justified as a constable, is said to have overruled an objection to the action not being brought within six months, according to 24 Geo. 2, c. 44, s. 8, on this distinction, viz. "that the defendant acted *colore officii* and not *virtute officii*;" he said, "that a constable acting *colore officii* was not protected by the statute; where the act committed is of such a nature, that the office gives him no authority to do it, in the doing of that act he is not to be considered as an officer." This is agreeable to the construction of the act laid down in the text; but some mistake may be

suspected in the subsequent expression attributed to his lordship, viz. "that where a man, doing an act within the limits of his official authority, exercises that authority improperly, or abuses the discretion placed in him, to such cases the statute extends;" *Alcock v. Andrews*, 2 Esp. Cas. 541. This position at least requires a further explanation to render it consistent with the doctrines elsewhere delivered.

(*h*) *Bell v. Oakley*, 2 M. & S. 259. See *R. v. Marsden*, L. R., 1 C. C. R. 131, as to illegal arrest by constable for an assault committed on him in the execution of his duty.

house, which it was admitted he was not justified in doing by the warrant: it was held, that, although he thereby exceeded his authority, yet he was within the protection of the 12th section of that statute: the object of which was, as laid down by Lord *Ellenborough*, to protect persons acting illegally, but in supposed pursuance of the statute, and with a *bond fide* intention of discharging their duty under the act of parliament; for if it meant only acts lawfully done under the authority of the statute, the constable would not in that case need to be protected (i).

And, although an officer, in order to entitle himself to the protection of the *sixth* section of the 24 Geo. 2, c. 44, must act strictly in obedience to the warrant of the magistrate,—for the act done is then identified with that of the justice, who becomes alone responsible for it,—yet if a constable acting *bond fide*, and with an honest opinion that he is discharging his duty, should even exceed his authority, he still does not lose the protection given both to justices and constables by the *eighth* section of the statute, which provides, that no action shall be brought against either of them for any thing done in the execution of their respective offices, unless commenced within six calendar months after the act committed. For this last provision has a very different object in view from that of the *sixth* section, being evidently intended for the benefit of persons who intend to act right, but by mistake act wrong. Therefore, where a constable, acting under a warrant commanding him to take the goods of A., took the goods of B., believing them *bond fide* to belong to A.: it was held, that the

(i) *Theobald v. Chrichmore*, 1 B. & Ald. 227; *Eggington v. The Mayor, &c. of Lichfield*, 5 El. & Bl. 100; 1 Jur. (N. S.) 908, 911; 24 L. J., Q. B. 260, S. C.; *Gosden v. Elphick and another*, 4 Exch. 445. In the latter case it was held that if he acted *bond fide*, believing that he was doing his duty, though mistaken, he was within the protection

of the statute, and that the question was not whether the circumstances were such as might reasonably lead him to think he was so acting. See also *Ballinger v. Ferris*, 1 M. & W. 628; *Pease v. Chaytor*, 3 B. & S. 620; 32 L. J., M. C. 121; and *ante*, p. 392, n. (c).

action against him for this wrongful seizure must be brought within six calendar months (*k*).

Where magistrates, after examining an overseer's accounts, had found a balance due from him to the parish, and after a lapse of fourteen days had signed a distress warrant ; but before it was executed, upon a suggestion of a mistake in the amount adjudged, they ordered the execution of the warrant in the hands of the officers to be suspended, notwithstanding which, the officers afterwards executed it, and no previous demand had been made of a copy of the warrant : it was held, that, the adjudication and warrant being legal, the justices could not order the warrant to be suspended, on the mere ground of doubts being entertained whether the accounts were well settled,—and that the officers were therefore justified in acting under it, and entitled to have the demand of the copy and perusal of the warrant made before the action brought. But it would appear, that if the warrant had been a nullity, and the officers had previous notice thereof, they would not then have been entitled to the protection of the statute (*l*).

3. A warrant directed to constables generally, by their name of office only, was formerly understood as an authority to each in his own district only (*m*). And, therefore, a constable, acting under such general direction, was held not to be protected by the warrant in any act done out of the limits of his own division (*n*) ; though if the warrant was directed to a constable by name, and not merely by his office, it *might* legally be executed by him at any place within the jurisdiction of the magistrate (*o*). But this distinction now no longer holds ; for, as we have seen, by

Who protected by the warrant.

(*k*) *Parlon v. Williams*, 3 B. & Ald. 380.

(*l*) *Barrons v. Luscombe*, 5 Nev. & M. 830.

(*m*) *R. v. Chandler*, 1 Ld. Raym. 545 ; see *Mellor v. Leather*, 1 El. & Bl. 619 ; *Freegard v. Barnes*, 7 Exch. 827 ; 1 & 2 Vict. c. 74 ; *Jones v. Chapman*, 14 M. & W.

124 ; 2 D. & L. 907, S. C. ; *R. v. Sanders*, 16 L. T. 381 ; see *ante*, pp. 248, 278.

(*n*) *Blatcher v. Kemp*, 1 H. Bl. 15, n.

(*o*) 1 Ld. Raym. 545 ; 1 H. Bl. 15, n. ; *R. v. Weir*, 1 B. & C. 288 ; 2 D. & R. 444 ; 1 D. & R. Mag. Ca. 319.

11 & 12 Vict. c. 43, constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same (*p.*)

Where a person *bond fide* makes a statement of facts to a justice, upon sworn information, and such justice, after considering the sufficiency of such facts, issues a search warrant under section 10 of the Criminal Law Amendment Act, 1885, an action will not lie against the informant for maliciously and without reasonable and probable cause obtaining a warrant, where upon its execution it is discovered that he has been mistaken (*q*). Lord *Coleridge*, C.J., saying in his judgment—"The Act of Parliament therefore casts on the magistrate (and if legislation of this nature is to be effective, most properly so), the onus of its being made to appear to him that there is reasonable cause that the girl is being detained for immoral purposes. If the person who puts the magistrate in action only states the grounds of his suspicion and says that on those grounds he reasonably suspects that the girl is improperly detained, and if the magistrate agrees with him, and thinks that it has been made to appear to him that a person acting *bond fide* has reasonable cause for his suspicion, then that decision of the magistrate is an answer to such an action as the present. The magistrate has to act judicially. I do not, however, suggest for an instant that this action would not lie against a person who, desiring to use the powers given by this Act for purposes of oppression, and knowing that he had no reasonable cause for suspicion, in a false and fraudulent manner obtained the issue of a search warrant; but where *bona fides* is present, and the matter is stated fully and fairly to the magistrate, and he concludes that there is reasonable ground for the applicant's suspicion, then his conclusion is an answer to any proceeding."

It has also been held that the act of the justice in

(*p*) *Ante*, p. 25.

(*q*) *Hops v. Evered*, 17 Q. B. D.

338; 55 L. J., M. C. 146

issuing a warrant under this section of the Criminal Law Amendment Act, 1885, is a judicial act, and is an answer to an action for malicious prosecution against the person on whose information the justice has acted (*r*).

The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 16, authorizes a constable, in certain cases, to search for and seize goods, under a warrant issued by a chief officer of police.

A warrant of commitment issued by a Court of competent jurisdiction and valid on the face of it protects the keeper of the prison to whom it is directed, who obeys it according to its terms, against an action for false imprisonment by the person ordered to be imprisoned (*s*).

By 21 Jac. 1, c. 12, s. 52, the action against a constable *Venue* or other officer sued for any thing done by virtue of his office must be laid within the county where the trespass or fact is done and committed, and not elsewhere. In a case arising on the former Malicious Trespass Act, 1 Geo. 4, c. 56, two constables were sued in *Middlesex* for an act done in *Surrey*, and upon the fact so appearing *Abbott*, C.J., immediately directed a verdict for the defendants (*t*).

And in another case, where an action was brought against a constable in *London*,—for apprehending a person on a charge of forgery in *Middlesex*, without a warrant, and with very slight cause of suspicion,—it was held by the same learned judge, that the defendant was entitled to an acquittal; for although he had not been called upon to act, still he might have thought it his duty to act, in the capacity of constable; and that by the words in the statute, “by virtue of his office,” was meant, that he was acting under colour of his office, intending to act in the character of constable (*u*).

(*r*) *Lea v. Charrington*, 23 Q. B. D. 45.

(*s*) *Henderson v. Preston*, 21 Q. B. D. 362; 57 L. J., Q. B. D. 607.

(*t*) *Bond v. Rust*, *Middlesex Sitings*, 1st November, 1826.

(*u*) *Straight v. Gee*, 2 Star. 445. Notwithstanding the general abolition of local venue by O. XXXVI.

By the same statute, all persons who act in the aid and assistance, or by the command of the constable, are equally entitled to the same protection in any action that may be brought against them; and whether they act merely in aid of the constable, or as prime movers in the transaction, is a proper question for the consideration of the jury.

No action can be commenced against any Commissioner, collector or officer or person employed in relation to inland revenue, for any act done in pursuance or execution of any Act relating to inland revenue, unless the action is commenced within 3 months next after the cause of action arose, and 1 month's notice of action is given. The defendant may plead not guilty by statute (x).

r. 1, of Judicature Rules, 1883, it is conceived that where a local venue is expressly given by a special act, the right to local venue will survive. See *Thorpe v. Adams*,

L. R., 6 C. P. 128; 40 L. J., M. C. 52.

(x) 53 & 54 Vict. c. 21, s. 28.

CHAPTER III.

EFFECT OF CONVICTION IN COLLATERAL PROCEEDINGS.

A CONVICTION or order has sometimes, by reason of statutory provisions, the effect of divesting possession in goods from one and vesting it in another. Divesting possession.

Thus a fire having occurred in warehouses near the Thames, and melted tallow having flowed from them down the sewers into the river, it was collected by a person, who sold it to the plaintiff. While he was carrying it away he was stopped, and taken before a metropolitan police magistrate, who discharged him, but ordered the tallow to be detained by the police (under sect. 29 of 2 & 3 Vict. c. 71). In consequence of the tallow becoming offensive, it was sold to the defendants by direction of the Commissioners of Police before the time limited for that purpose, and in an action to recover it, it was held, that the plaintiff had no property in the tallow, and that his possession had been lawfully divested by the order of the magistrate, and, therefore, that he could not maintain the action (a). The effect of a conviction or order with respect to its conclusiveness as to the facts found in it has been already considered (b). It is in general a bar to other proceedings for the same cause (c). A summary conviction for an assault

Conclusive-
ness of facts
stated in.

Res judicata.

(a) *Buckley v. Gross and another*, 3 B. & S. 566; 32 L. J., Q. B. 129; see ss. 29 and 30 of the above statute.

(b) *Ante*, pp. 154, 343.

(c) 24 & 25 Vict. c. 96, ss. 107, 109, and c. 97, s. 67, and *ante*, p. 154. By s. 109 of 24 & 25 Vict. c. 96, it is enacted, that any person convicted of an offence punishable on summary conviction by virtue of that act having paid the sum adjudged with costs, or having re-

ceived a remission thereof from the Crown, or having suffered the imprisonment awarded for nonpayment thereof, or the imprisonment adjudged in the first instance, or having been discharged from his conviction by any justice (as in sect. 108), shall be released from all further or other proceedings for the same cause. And see "The Seaman's Clothing Act, 1869" (32 & 33 Vict. c. 57, s. 6). Metropolitan police magistrates are em-

is no bar to an indictment for manslaughter, when the party assaulted has subsequently died from the effect of the blows (*d*); but a man who has been either acquitted or convicted before justices of an assault, cannot afterwards be indicted for felonious wounding in the same transaction (*e*). So, when a person has been convicted of an assault on a married woman, under 24 & 25 Vict. c. 100, and has paid the penalty imposed, he cannot afterwards be sued by the husband in respect of the consequential damage to himself by reason of the assault on his wife (*f*). So, an award of compensation by a magistrate against the driver of a hackney or metropolitan stage carriage upon an information for furious driving, under 6 & 7 Vict. c. 68, s. 28, is a bar to a subsequent action against such driver's employers by the party injured in respect of his injuries (*g*). And if the party injured accepts such compensation, he is barred from further proceedings, even where he did not lay the information, or, in the first instance, request the magistrate to award compensation (*h*). Previous summary convictions materially affect the measure of punishment awarded to the same person subsequently convicted, either summarily or upon indictment (*i*).

Effect on
punishment
for subsequent
offences.

powered upon a complaint to them of the unlawful detention of goods under £15 in value, to enquire into the title thereto, and to order the goods to be delivered up, provided that no such order shall bar any person recovering possession of the goods so delivered by action at law. To an action for the conversion of goods, the defendant pleaded an *estoppel*, alleging that a Metropolitan police magistrate had, after summoning the defendant before him, enquired into the title to the goods, dismissed the summons, and thereby adjudicated in his favour. It was held that that was no bar to the action. *Dover v. Child*, 1 Ex. D. 172; 45 L. J., Ex. 462.

(*d*) *R. v. Morris*, L. R., 1 C. C. 90; 36 L. J., M. C. 84.

(*e*) *R. v. Walker*, 2 M. & R.

446; *R. v. Elrington*, 31 L. J., M. C. 14. See also *Wemyss v. Hopkins*, L. R. 10 Q. B. 378; 44 L. J., M. C. 101. A person who has been convicted of an assault by a Court of Summary jurisdiction, but has been discharged, without any sentence of fine or imprisonment, on giving security to be of good behaviour, cannot afterwards be convicted on an indictment for the same assault. *R. v. Miles*, 24 Q. B. D. 423.

(*f*) *Masper and Wife v. Brown*, 1 C. P. D. 97; 45 L. J., C. P. 203; *Holden v. King*, 46 L. J., Ex. D. 75; 35 L. T. 479.

(*g*) *Wright v. L. G. Omnibus Co.*, 2 Q. B. D. 271; 46 L. J., Q. B. 429.

(*h*) *Id.*

(*i*) See for instance 24 & 25 Vict.

How far a regular conviction unappealed from is evidence in an action for any thing done *under* it has been treated of already in considering the proceedings against magistrates and officers (*k*). With regard to its effect in any collateral proceedings, it has been laid down, that the person, upon whose evidence another has been convicted, cannot make use of the conviction in a civil proceeding between him and the same person, as evidence of that person's being guilty of the offence, though it may be admissible in mitigation of damages (*l*).

Conviction not evidence (in civil proceedings) of the guilt of person convicted.

A conviction, however, before a competent tribunal, and unreversed, will operate as an estoppel in a criminal proceeding upon the points decided by it. Therefore, where on an indictment for non-repair of a highway against the inhabitants of the township of H., averring that the highway was in the township, the prosecutors gave in evidence a record of a presentment by a justice under 13 Geo. 3, c. 78, on his own view, that the road in question was out of repair, averring that it was in the township of H., and that the inhabitants of that township ought to repair it, and the record showed a plea of guilty by two inhabitants of the township of H., a conviction before the sessions, and a sentence of fine; it was held conclusive evidence against H., that the road was in that township, and this, although the presentment might have been bad on error for not showing how the township was liable (*m*).

Conviction, when an estoppel.

A conviction in general is proved by a certified copy (*n*). The Prevention of Crimes Act, 1871 (*o*), enacts that "A previous conviction may be proved in any legal proceeding whatever against any person by producing a record

Convictions, how proved.

c. 96, s. 9; and as to stating such convictions in an indictment, *Id.* s. 116, and *Cureton v. The Queen*, 33 L. J., M. C. 149.

(*k*) *Ante*, p. 390, and *id.* n. (*x*).

(*l*) *Smith v. Rummens*, 1 Camp. 9; *R. v. Howe*, 1 Camp. 461.

(*m*) *R. v. JJ. Houghton*, 1 El. & Bl. 501; see *Keane v. Reynolds*, 2

Id. 748; *R. v. JJ. Bristol*, 22 L. T. 213; *Justice v. Gosling*, 21 L. J., C. P. 94.

(*n*) See *R. v. Yeoveley*, 8 A. & E. 806; *R. v. Ward*, 6 C. & P. 366; 24 & 25 Vict. c. 96, ss. 112, 116, and see 97, s. 70.

(*o*) 34 & 35 Vict. c. 112, s. 18.

or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted. A record or extract of conviction . . . in the case of a summary conviction shall consist of a copy of such conviction purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made, or to be signed by the proper officer of the Court by which such conviction was made, or by the clerk or other officer of any Court to which such conviction has been returned. A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same and a conviction before the passing of this act shall be admissible in the same manner as if it had taken place after the passing thereof. The mode of proving a previous conviction authorized by this section shall be in addition to, and not in exclusion of, any other authorized mode of proving such conviction " (*p*).

(*p*) See 24 & 25 Vict. c. 96, ss. 112, 116, and c. 97, s. 70, where it is expressly enacted that convictions under their provisions may

be proved by certified copies, and shall be presumed to have been unappealed against, until the contrary is shown.

APPENDIX.

| I. STATUTES. | | III. FORMS. | |
|--|-----|---|-----|
| <i>The Summary Jurisdiction Act,</i> | | I. <i>Appeal</i> | 537 |
| 1848 (11 & 12 Vict. c. 43) . . . | 441 | II. <i>Schedule of Forms to Summary Jurisdiction Rules,</i> | |
| <i>The Justices Protection Act,</i> 1848 | | 1886 | 539 |
| (11 & 12 Vict. c. 44) | 463 | 1. <i>In Summary Proceedings other than</i> | |
| <i>The Quarter Sessions Act,</i> 1849 | | <i>for Civil Debts</i> | 541 |
| (12 & 13 Vict. c. 45) , | 467 | 2. <i>In Proceedings for the</i> | |
| 20 & 21 Vict. c. 43 (<i>Stating</i> | | <i>Recovery of a Civil</i> | |
| <i>case for opinion of Court</i>) . . . | 473 | <i>Debt</i> | 568 |
| 35 & 36 Vict. c. 26 (<i>Affidavit</i> | | III. <i>Schedule of Forms to Crown</i> | |
| <i>of Justices</i>) | 476 | <i>Office Rules,</i> 1886 | 574 |
| <i>The Summary Jurisdiction Act,</i> | | 1. <i>Certiorari</i> | 574 |
| 1879 (42 & 43 Vict. c. 49) . . . | 477 | 2. <i>Criminal Informa-</i> | |
| <i>The Summary Jurisdiction</i> | | <i>tion</i> | 581 |
| (<i>Process</i>) <i>Act,</i> 1881 (44 & 45 | | 3. <i>Mandamus</i> | 582 |
| <i>Vict. c. 24)</i> | 513 | 4. <i>Writ of subpoena be-</i> | |
| <i>The Summary Jurisdiction Act</i> | | <i>fore Justices at petty</i> | |
| 1884 (47 & 48 Vict. c. 43) . . . | 516 | <i>sessions</i> | 584 |
| <i>The Probation of First offenders</i> | | 5. <i>Habeas Corpus</i> | 586 |
| <i>Act,</i> 1887 (50 & 51 Vict. c. 25). . | 520 | IV. <i>Schedule of Forms to Sum-</i> | |
| <i>The Interpretation Act,</i> 1889 | | <i>mary Jurisdiction Rule,</i> | |
| (52 & 53 Vict. c. 63) | 521 | 1891 | 589 |
| II. RULES. | | 1. <i>Under Reformatory</i> | |
| <i>The Summary Jurisdiction</i> | | <i>Schools Act,</i> 1866 | 589 |
| <i>Rules,</i> 1886 | 524 | 2. <i>Under Industrial</i> | |
| <i>The Crown Office Rules,</i> 1886 . . | 529 | <i>Schools Acts</i> | 591 |
| <i>The Summary Jurisdiction</i> | | 3. <i>Under Elementary</i> | |
| <i>Rule,</i> 1891 | 536 | <i>Education Act,</i> 1876. | 593 |

I. STATUTES.

NOTE.—The pages mentioned in the margin refer to the pages in the former part of the Work, where the section against which they are placed is cited or commented upon.

THE SUMMARY JURISDICTION ACT, 1848.

11 & 12 VICT. C. 43 (a).

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to Summary Convictions and Orders.
[14th August, 1848.]

. . . . In all cases where an information shall be laid before one Pages 67, 91.
or more of her Majesty's justices of the peace for any county, In all cases
where infor-

(a) See general observations upon this statute, *ante*, p. 67 *et seq.*

mation shall be laid or complaint made of offences committed, justices may issue summons to persons to answer the same.

How summons to be served.

Justices not obliged to issue summonses in certain cases. No objection allowed for want of form.

If summons be not obeyed, justices may issue warrant; Pages 98, 104.

riding, division, liberty, city, borough or place, within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough or place, as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer or person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: Provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made ex parte: Provided also, that no objection shall be taken or allowed to any information, complaint or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

II. If the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served in what shall be deemed by such

justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information or complaint, and to be further dealt with according to law ; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or information being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough or place, to answer to the said information, and to be further dealt with according to law ; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

or may issue
warrant in
the first
instance.

or if sum-
mons, having
been duly
served, be not
obeyed, the
justices may
proceed
ex parte.

III. Every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district, and it shall state shortly

Form of
warrant.
Pages 104,
105, 106.

Where and
how warrant
may be
executed.

Certain pro-
visions of 11
& 12 Vict.
c. 42, as to
backing of
warrants to
extend to
warrants
issued under
this act.

the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, borough or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet or place, situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder or other peace officer; and such of the provisions and enactments contained in a certain act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences," (b) as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this act, shall extend to all such warrants, and to all

(b) 11 & 12 Vict. c. 42, ss. 11—15; *ante*, p. 25.

warrants of commitment issued under and by virtue of this act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this act: Provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the said defendant to the house of correction or other prison, lock-up house or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying upon the back of the said recognizance the nonappearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place, within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance of the said defendant.

No objection allowed for want of form in the warrant, or for any variance between it and evidence adduced; but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance;

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

IV. In any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be, and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to

Description of the property of partners, &c.;

Page 78.

of the property of counties;

of the property in goods provided for the poor ;

of the property in materials for parish roads ;

of the property in materials for turnpike roads, &c. ;

of the property of commissioners of sewers.

Prosecution and punishment of aiders and abettors in the commission of offences.

Page 81.

* *Sic.*

Provisions of 11 & 12 Vict. c. 42, as to justices in one county, &c. acting for another to extend to this act.

describe the ownership of any work or building made, maintained or repaired at the expense of any county, riding, division, liberty, city, borough or place, or of any materials for the making, altering or repairing of the same, they may be therein described as the property of the inhabitants of such county, riding, division, liberty, city, borough, or place respectively ; and all goods provided by parish officers for the use of the poor may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them ; and all materials and tools provided for the repair of highways at the expense of parishes or other districts in which such highways may be situate may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them ; and all materials or tools provided for making or repairing any turnpike road, and buildings, gates, lamps, boards, stones, posts, fences or other things, erected or provided for the purpose of any such turnpike road, may be described as the property of the commissioners or trustees of such turnpike road, without naming them ; and all property of the commissioners of sewers of any district may be described as the property of such commissioners, without naming them.

V. Every person who shall aid, abet, counsel or procure the commission of any offence, which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable,* and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

VI. Such of the provisions and enactments in the act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Persons charged with indictable Offences,"(c) whereby a justice of the peace for one county, riding, division, liberty, city, borough or place may act for the same whilst residing or being in an adjoining county, riding,

division, liberty, city, borough or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division or liberty may act as such within any city, town or precinct, next adjoining thereto or surrounded thereby, being a county of itself or otherwise having exclusive jurisdiction, as are applicable to the provisions of this act, shall be deemed to be incorporated into this act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this act (d).

VII. If it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs or expenses in that behalf) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, as shall then be there, to

Power to justice to summon witnesses to attend and give evidence; Page 119.

if summons be not obeyed, justices may issue warrant;

(d) This section is not controlled by sect. 35 of this act; see 26 & 27 Vict. c. 77. See *Bradford Union v. Clerk of Peace for Wilts*, L. R. 3 Q. B. 604; 37 L. J., M. C. 129, where *Blackburn, J.*, said, "The

effect of 26 & 27 Vict. c. 77, is to add a proviso to sect. 35 of 11 & 12 Vict. c. 43, that sect. 6 of that act shall apply to the cases otherwise excepted in sect. 35."

in certain cases may issue warrant in the first instance.

Persons appearing on summons, &c. refusing to be examined, may be committed.

Complaints for an order need not be in writing.
Page 83.

As to proceedings upon informations for offences punishable on summary convictions.
Page 86.

The party charged, if deceived by

testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same ; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, and which, if necessary, may be backed as aforesaid ; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

VIII. In all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament upon which such complaint shall be framed.

IX. In all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same ; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined ; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or

justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned. . . .

variance between information and evidence, may be committed or discharged upon recognizance ;

X. Every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf.

Manner of making complaint or laying information.

Page 68.

When warrant issued in the first instance, information to be upon oath, &c.

Information to be for one offence only.

XI. In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Time limited for such complaint or information.

Page 76.

XII. Every such complaint and information shall be heard, tried, determined and adjudged by one or two or more justice or justices of the peace, as shall be directed by the act of parliament upon which such complaint or information shall be framed, or such other act or acts of parliament as there may be in that behalf; . . . and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the

As to the hearing of complaints and informations.

Page 110.

Places in which justices shall sit to

hear complaints, &c., to be deemed an open court.

Parties allowed to plead by counsel or attorney.

If defendant does not appear, justices may proceed to hear and determine, or issue warrant, and adjourn the hearing till defendant is apprehended.

Page 103.

If defendant appear, and complainant, &c. does not, justice may dismiss the complaint, &c. or at discretion, adjourn hearing and commit or discharge defendant upon recognizance ;

public generally may have access, so far as the same can conveniently contain them ; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf ; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

XIII. If at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons ; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended ; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough or place, who shall thereupon, either by his or their warrant, commit such defendant to the house of correction or other prison, lock-up house or place of security, or, if he or they think fit, verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice ; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day upon such terms as he or they shall think fit, in which case such justice or justices may commit the defendant in the meantime

to the house of correction or other prison, lock-up house or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; . . . but if both parties appear, either personally or by their respective counsel or attornies, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same. If both parties appear, justice to hear and determine the case.

XIV. Where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say, as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made (e), for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the said justice or justices in proper form, under his or their

Proceedings on the hearing of complaints and informations.

Pages 111, 164, 232.

(e) And see sect. 17.

hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same, and shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: Provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso or condition in the statutes on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

Proviso.

Prosecutors and complainants in certain cases to be deemed competent witnesses, and examined upon oath, &c.

Page 120.

Power to justices to adjourn the hearing of cases, and commit defendant, or suffer him to go at large, or discharge him upon his own recognizance;

Pages 112, 113.

XV. Every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

XVI. Before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit him to the common gaol or house of correction or other prison, lock-up house or place of security in the county, riding, division, liberty, city, borough or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or

justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit. . . .

XVII. . . . In all cases where by any act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order (*g*) before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress. Form of convictions and orders (*f*).

XVIII. In all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid. Power to justices to award costs, which shall be specified in conviction or order of dismissal, and may be recovered by distress. Page 227.

XIX. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such Power to justice to issue warrant of distress.

(*f*) The schedule of forms will be found, *post*, "Forms." By the Summary Jurisdiction Act, 1884, "so much of this section as specifies any form of conviction or order

for which another form is provided by a rule under the Summary Jurisdiction Acts" is repealed. Page 243.

(*g*) See sect. 14.

How warrant
to be backed.

conviction or order such penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justices of any other county or place such justice of such other county or place shall thereupon make an indorsement on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place. . . .

Justice, after
issuing war-
rant, may
suffer defen-
dant to go at
large, or
order him
into custody,
until return
be made un-
less he gives
security by
recognizance ;

Page 251.

In default of
sufficiency of
distress, jus-
tice may com-
mit defendant
to prison.

Page 251.

XX. In all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough or place as may then be there. . . .

XXI. If at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same

shall be returned to issue his warrant of commitment under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXII. And whereas by some acts of parliament justices of the peace are authorised to issue warrants of distress to levy penalties or other sums recovered before them ^(h) by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; be it therefore enacted, that in all such cases, and in cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment) shall be sooner paid.

In all cases of penalties, convictions or orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

Pages 251, 264.

XXIII. In all cases where the statute by virtue of which a

Power to justices to order commitment

(h) So much of this section as is inconsistent with the Summary Jurisdiction Act, 1879, is repealed. See s. 55 of that Act. Money re-

coverable on complaint or order by distress warrant is now recoverable as a civil debt; see *post*, p. 479.

in the first instance for nonpayment of a penalty or of a sum ordered to be paid.

Page 263.

conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour, for a certain time, unless such penalty, compensation or sum shall be sooner paid, in every such case such penalty, compensation or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith, or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of commitment under his or their hand and seal, or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough or place aforesaid, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

Power to justices to order commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.

Page 264.

XXIV. Where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough or place, to issue his or their warrant of commitment under his or their hand and seal, or hands and seals, and requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough or place, as the case may be, and there to deliver him to the keeper

thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

Costs may be levied by distress, and in default defendant may be committed for a further term.

XXV. Where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudged the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed: and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence. Page 279.

XXVI. Where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

If information be dismissed costs may be recovered by distress upon prosecutor, &c. who in default may be committed.

XXVII. After an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such

After appeal against conviction or

order justice
may issue
warrants of
distress for
execution of
the same.
Page 287.

Costs of ap-
peal, how
recovered.

conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough or place, may issue such warrant of distress or commitment as aforesaid for execution of the same as if no such appeal had been brought; and if upon any such appeal, the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, and in default of distress he or they may commit the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

On payment
of penalty,
&c. distress
not to be
levied, or the
party, if im-
prisoned for
non-payment,
shall be dis-
charged.
Page 252.

XXVIII. In all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter (i).

(i) This section is repealed so far as it is inconsistent with the more comprehensive provisions of the

Summary Jurisdiction Act, 1879, s. 43, sub-section 8; see s. 55 of that Act.

XXIX. In all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: Provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

In cases of summary proceedings one justice may issue summons or warrant, &c. and after conviction or order may issue warrant of distress, &c.

Page 76.

XXX. The fees to which any clerk of the peace shall be entitled shall be ascertained, appointed and regulated in manner following; (that is to say,) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time as they shall see fit, respectively make tables of the fees which in their opinion should be paid to the clerks of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before her Majesty's principal secretary of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace throughout England and Wales; and such secretary of state shall cause copies of such tables or set of tables or fees to be transmitted to the several clerks of the peace throughout England and Wales; and if after such copy shall be received by such clerk or clerks he or they shall demand or receive any

Regulations as to the payment of clerk's fees (k).

(k) This section, so far as it related to clerks of special and petty sessions and clerks of justices of the peace, was repealed by 40 & 41

Vict. c. 43, s. 8, which provides that clerks shall be paid by salary in lieu of fees. See Statute Law Revision Act, 1892.

other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at Westminster, by any person who will sue for the same : Provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

Regulations
as to whom
penalties, &c.
to be paid.

XXXI. In every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act ; and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable, or other person, such constable or other person shall forthwith pay the same to such clerk ; and if any person committed to prison upon any conviction or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk ; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed ; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough (l) or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp ; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in

Clerks to
keep accounts
of all monies
received, &c.
in the form in
schedule to
this act, and
render the
same to the
justices at
sessions.

(l) The words " liberty, city, " &c. mean a liberty, city, borough, &c. which has a court of quarter

sessions, *Mayor of Reigate v. Hart*, L. R., 3 Q. B. 244 ; 37 L. J., M. C. 70.

which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf. . . .

XXXIII. Any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this act to be done by any one or more justice or justices of the peace; and the several forms hereinafter mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an act passed in the third year of the reign of her present Majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an act passed in the same year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," or in an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for better defining the Powers of Justices within the Metropolitan Police District."

Metropolitan police magistrates and stipendiary magistrates in other places act alone.

Page 39.

Nothing to affect powers &c. contained in 10 Geo. 4, c. 44, 2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. c. 84.

XXXIV. It shall be lawful for the Lord Mayor of the City of London, or for any alderman of the said city, for the time being, sitting at the Mansion House or Guildhall Justice Rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and nothing in this act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police in the City of London."

The lord mayor, or any alderman of London, may act alone.

Nothing to affect powers, &c. contained in 2 & 3 Vict. c. 94.

To what this
act shall not
extend.

Page 69.

Act to extend
to Berwick-
upon-Tweed,
but not to
Scotland,
Ireland, &c.
except as to
backing of
warrants
under 11 & 12
Vict. c. 42.

XXXV. (*m*). Nothing in this act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing or care of any lunatic or insane person; nor shall anything in this act extend or be construed to extend to any complaints, orders or warrants in matters of bastardy (*n*) made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for nonpayment of the same (*o*).

XXXVII. The town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this act; but nothing in this act shall extend or be construed to extend to Scotland or Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney or Sark, save and except the several provisions respecting the backing of warrants contained in an act of parliament passed in this present session, intituled "An Act to facilitate the Performance of the Duties of Justices of Sessions within England and Wales with respect to persons charged with Indictable Offences," and incorporated into this act as aforesaid.

(*m*) This section does not apply to or control the sixth section; see 26 & 27 Vict. c. 77.

(*n*) As to the levying of sums under an order in bastardy, or an order enforceable in the same manner, see s. 54, of Summary Jurisdiction Act, 1889, *post*.

(*o*) The Statute Law Revision Act, 1876 (39 & 40 Vict. c. 20), brings under the Summary Jurisdiction Act, 1848, certain offences previously excluded from it. This is done by sect. 1, which is as follows:—

1. "There shall be repealed so much of section ten of 'The Inclosure Act, 1848' and of section ten of 'The Inclosure Act, 1849,' and of section thirty-three of 'The Inclosure Act, 1852,' as incorporates or refers to any provisions of the act of the seventh and eighth years of the reign of king George the fourth, chapter thirty, intituled

'An Act for consolidating and amending the Laws in England relative to Malicious Injuries to Property,' and which last-mentioned provisions have since been repealed, and in place thereof be it enacted, that—

"Any offence under section ten of 'The Inclosure Act, 1848,' and under section ten of 'The Inclosure Act, 1849,' and under section thirty-three of 'The Inclosure Act, 1852,' shall be deemed to be an offence punishable on summary conviction under the Summary Jurisdiction Act, and the acts amending the same: provided that any penalty or forfeiture incurred shall be applied in manner provided by the said Inclosure Acts, and that any information in relation to any such offence as is mentioned in this section shall be heard, tried, determined, and adjudged before two justices."

THE JUSTICES PROTECTION ACT, 1848.
(11 & 12 VICT. C. 44.)

An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in Execution of their Office.
[14th August, 1848.]

For an act by a justice of peace within his jurisdiction the action shall be on the case, and it shall be alleged to have been done maliciously, and without probable cause.

Pages 385, 389.

. . . . Every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

For an act done by him without jurisdiction, or exceeding his jurisdiction, an action may be maintained without such allegation (*p*); but not for an act done under a conviction **Sic.* or order, until after such conviction or order shall have been quashed; nor for an act done under a warrant to compel appearance, if a summons were previously served and not obeyed.

II. Any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration, that the act complained of was done maliciously and without reasonable and probable cause: Provided nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction * shall have been quashed, either upon appeal or upon application to her Majesty's Court of Queen's Bench; nor shall any such action be brought for any thing done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for any thing done under such warrant.

If one justice make a conviction or order, and another grant a warrant upon it, the action must be brought against the former, not the latter, for a defect in the conviction or order (*q*).

No action for issuing a distress warrant for poor rate by reason of any defect in the rate or, that the party is not rateable (*r*).

No action against justices for the manner in which they exercise a discretionary power.

If a justice refuse to do an act, the Queen's Bench Division may by rule, order him to do it, and no action shall be brought against him for doing it.

Page 398.

After conviction or order confirmed on appeal, no action for any thing done under a warrant upon it.

Page 400.

III. Where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace bonâ fide and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

IV. Where any poor rate shall be made, allowed and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein; and in all cases where a discretionary power shall be given to a justice of the peace by any act or acts of parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

V. . . . In all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to her Majesty's Court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

VI. In all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant for any thing which may have been done under the same by reason of any defect in such conviction or order.

VII. In all cases where by this act it is enacted that no

action shall be brought under particular circumstances, if any such action shall be brought it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

If an action be brought where by this act it is prohibited, a judge may set aside the proceedings.

VIII. No action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed.

Page 402.
Limitation of action.

IX. No such action shall be commenced against any justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

Page 406.
Notice of action.

Page 40

X. In every such action the venue shall be laid in the county where the act complained of was committed, or in actions in the County Court the action must be brought in the court within the district of which the act complained of was committed; and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse or justification in evidence under such plea at the trial of such action: Provided always, that no such action shall be brought in any such County Court against a justice of the peace for anything done by him in the execution of his office if such justice shall object thereto; and if within six days after being served with a summons in any such action such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such County Court for such cause of action, all proceedings afterwards had in such County Court in any such action shall be null and void.

Venue.
Page 402
Defendant may plead the general issue and give special matter in evidence.

Page 414.

XI. In every such case after notice of action shall be given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into court such sum of

Tender, and payment of money into court.
Page 414

money as he may think fit, and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, or beyond the sums so tendered and paid into court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

In what cases
nonsuit, or
verdict for
defendant.
Page 404.

XII. If at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the County Court) within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

Damages.
Page 416.

XIII. In all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for nonpayment of the sum he was so ordered to pay.

XIV. If the plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this act had not been passed ; or if in such case it be stated in the declaration, or in the summons and particulars in the County Court if he sue in that court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client ; and in every action against a justice of the peace for any thing done by him in the execution of his office the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

XV. This act shall extend only to England and Wales and the town of Berwick-upon-Tweed(s).

XVIII. This act shall apply for the protection of all persons for any thing done in the execution of their office, in all cases in which, by the provisions of any act or acts of parliament, the several statutes or parts of statutes hereinbefore mentioned and by this act repealed would have been applicable if this act had not passed.

Costs.
Page 417.

Act to extend
only to Eng-
land, Wales,
and Berwick
Act to apply
to persons
protected by
the repealed
statutes.

THE QUARTER SESSIONS ACT, 1849.
(12 & 13 VICT. C. 45.)

An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts.

[28th July, 1849.]

. . . . In every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace fourteen clear days notice of appeal at least shall be given, and such shall be sufficient notice, any act or acts, or any rule or practice of any court or courts, to the contrary notwithstanding ; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her or their attorney on his, her or their behalf, and the grounds of appeal

Uniformity of
time for
notice of ap-
peal.
Notice of ap-
peal to be in
writing, and
signed.

(s) Sects. XVI. and XVII. are repealed, Stat. Law Rev. Act, 1875

Grounds of appeal to be stated.

Pages 291, 293.

Act not to affect notices of appeal against orders of removal, orders of bastardy, &c. Page 288, n. (y).

Defects in statement of grounds of appeal.

Amendment of grounds of appeal.

Frivolous grounds of appeal.

Sessions to have a general power to

shall be specified in every such notice : Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.

II. None of the provisions hereinbefore contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office ; but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted.

III. . . . Upon the hearing of any appeal to any court of general or quarter sessions of the peace no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial : Provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

IV. If in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall in the opinion of the court determining the appeal be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal.

V. Upon any appeal to any court of general or quarter sessions of the peace the court before whom the same shall be

brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an act passed in the twelfth year of her Majesty's reign, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders."

give costs in
all cases of
appeal.
Page 318.

11 & 12 Vict.
c. 43.

VI. And for the more effectual prevention of frivolous appeals, any court of general or quarter sessions of the peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid.

Frivolous
appeals.
Page 295.

VII. . . . If upon the trial of any appeal to any court of general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order or judgment brought up upon a return to a writ of certiorari shall be allowed unless such omission or mistake shall have been specified in the rule for issuing such certiorari.

Rule for cer-
tiorari to
state objec-
tions.

VIII. . . . Where any recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance, or new and sufficient

Amendment
of recogni-
zances.
Page 296.

recognizances, to be entered into before such court in the place of such insufficient, defective or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable ; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any statute or statutes for that purpose.

Decisions of
sessions,
when final.
Page 313.

IX. The decisions of the court of general or quarter sessions of the peace upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any court by means of a writ of certiorari or mandamus, or otherwise.

Amendment
of indict-
ment (t).

X. Every court of general or quarter sessions of the peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended which is given to courts of oyer and terminer and general gaol delivery with regard to offences tried before such last-mentioned courts by virtue of an act of the twelfth year of her Majesty's reign, intituled "An Act for the Removal of Defects in the Administration of Criminal Justice ;" and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared.

11 & 12 Vict.
c. 46.

Power to
state a special
case without
going to the
sessions pre-
viously.
Page 315.

XI. At any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by consent, and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree

(t) See 14 & 15 Vict. c. 100, s. 1.

that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given ; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions upon an appeal duly entered and continued.

XII. . . . At any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate or other matter (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes or post office), for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attorneys, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and every award or umpirage duly made under this act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions.

XIII. It shall be lawful for any court of general or quarter sessions of the peace before which any appeal (except against a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post office), shall be brought to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper : and the award of the arbitrator or arbitrators, or umpirage of the umpire, may on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court.

References by order of court of sessions.

XIV. If upon any reference to arbitration under this act it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful

Where reference abortive Queen's Bench may order sessions to hear the appeal.

for the said court to order the court of general or quarter sessions of the peace to enter continuances and hear the appeal.

Recognizances
for prosecution and trial
of appeal.

XVI. No recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case without previously going to the court of general quarter sessions, or by any submission to arbitration under the provisions of this act.

3 Geo. 4,
c. 46.

Levying and
recovery of
fines, issues
and amercia-
ments.

XVII. And whereas by an act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures and Recognizances estreated," provision is made for authorizing the levying and recovery of fines, issues, amerciaments, and forfeited recognizances set, imposed, lost, or forfeited by or before any justice or justices of the peace in England; and whereas it is expedient that the subsequent proceeding in such cases should be uniform: Be it enacted that the proceedings subsequent to such authority given for so levying and recovering as aforesaid shall and may be the same in all respects in the case of such fines, issues, and amerciaments as are by the said act provided, permitted and required in the case of such forfeited recognizances.

Enforcing
orders of
sessions.

Page 320.

XVIII. In all cases where any order shall be made by any court of general or quarter sessions of the peace it shall be lawful for the Court of Queen's Bench, or for any judge of that court at Chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order.

Not to extend
to Scotland or
Ireland.

XIX. Nothing in this act contained shall extend to Scotland or Ireland.

20 & 21 VICT. C. 43.

An Act to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace. Page 323.
[17th August, 1857.]

I. In the interpretation and for the purposes of this act, the following words shall have the meaning hereinafter assigned to them; that is to say, Interpretation of terms.

“Superior Courts of Law” shall for England mean the Supreme Courts of Law at Westminster, and for Ireland the Supreme Courts at Law at Dublin:

“Court of Queen’s Bench” shall mean for England the Court of Queen’s Bench at Westminster, and for Ireland the Court of Queen’s Bench at Dublin.

II. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying (*u*), and such party, hereinafter called “the appellant,” shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called “the respondent.”

III. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to

(*u*) The power of the appellant to choose his own court is now taken away. See 36 & 37 Vict. c. 66, s. 45, and O. LIX. r. 17.

the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the Schedule to this act annexed marked (A.), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

Justices may refuse a case where they think the application frivolous.

Page 323.

IV. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her Majesty's attorney-general for England or Ireland, as the case may be.

Where the justices refuse, the Queen's Bench Division may by rule order a case to be stated.

V. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Superior court to determine the questions on the case;

VI. The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter and may make such orders as to costs as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

its decisions to be final.

Case may be sent back for amendment.

Page 330.

VII. The Court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent

back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

VIII. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time. Powers of superior court may be exercised by a judge at chambers.

IX. After the decision of the superior court in relation to any case stated for their opinion under this act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace, exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively. After the decision of superior court, justices may issue warrants.

X. No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this act. Certiorari not to be required for proceedings under this act.

XI. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned. Superior courts may make rules for proceedings.

XII. The words "justice or justices" in this act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate. "Justices" to include a stipendiary magistrate.

XIII. In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: Provided that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any Recognizances, how to be enforced.

2 & 3 Vict.
c. 71, s. 45.

Appellants
under this
act not
allowed to
appeal to
quarter ses-
sions.

Extent of act.

stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an act passed in the second and third years of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this act, in as ample a manner as if they had been herein re-enacted and made part of the same.

XIV. Any person who shall appeal under the provisions of this act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

XV. This act shall not extend to Scotland.

SCHEDULE (A.)

Fees to be taken by Clerks to Justices.

| | | |
|--|----|----|
| For drawing case and copy, where the case does not exceed five folios of ninety words each | s. | d. |
| | 10 | 0 |
| Where the case exceeds five folios, then for every additional folio | 1 | 0 |
| For the recognizance to be taken in pursuance of the act | 5 | 0 |
| For every enlargement or renewal thereof | 2 | 6 |
| For certificate of refusal of case | 2 | 0 |

35 & 36 VICT. c. 26.

An Act to amend the Practice of the Courts of Law with respect to the Review of the Decisions of Justices.

[18th July, 1872.]

WHEREAS ex parte proceedings are frequently taken in the superior courts of common law at Westminster to bring under review the decisions of justices of the peace acting both in and

out of sessions, and there is no fund at the disposal of such justices to defray the expense of appearing by counsel to support their decisions :

And whereas it is expedient that such justices should, without expense to themselves, have an opportunity in such cases of informing the court of the grounds of their decision, and of all material facts bearing upon the same : Be it enacted as follows :

1. This act may be cited as "The Review of Justices' Short title. Decisions Act, 1872."

2. Whenever the decision of any justice or justices is called in question in any superior court of common law by a rule to show cause or other process issued upon an ex parte application, it shall be lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit or any stamp duty thereupon, and such affidavit may be sworn before a commissioner authorized to take oaths in chancery and may be forwarded by post to one of the masters of the court for the purpose of being filed.

Justice, when his decision is called in question in a superior court, may file affidavit showing grounds of his decision without payment of fee.

3. Whenever such affidavit has been filed as aforesaid the court shall, before making the rule absolute against the justice or justices, or otherwise determining the matter so as to overrule or set aside the acts or decisions of the justice or justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said justices (x).

Court to take into consideration matters contained in affidavit notwithstanding non-appearance of counsel in support.

THE SUMMARY JURISDICTION ACT, 1879.

(42 & 43 VICT. C. 49.)

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates. [11th August, 1879.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This act may be cited for all purposes as the "Summary Jurisdiction Act, 1879."

(x) See observations on the requisites of an affidavit under this

Act in *R. v. JJ. of Exeter*, 42 L. J., M. C. 38.

Application
of act.

Commence-
ment of act.

2. This act shall not extend to Scotland or Ireland.

3. This act shall come into operation on the first day of January one thousand eight hundred and eighty (which day is in this act referred to as the commencement of this act) :

Provided that at any time after the passing of this act any rules may be made, and any act or thing necessary or proper thereof may be done, so that such rules, act, or thing take effect only upon the said commencement.

PART I.

Court of Summary Jurisdiction.

Mitigation of
punishment
by court.

Page 277.

4. Subject as in this act mentioned, and notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this act, or under any other act, whether past or future, to impose imprisonment or to impose a fine for an offence punishable on summary conviction, that court may, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts ; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof. But this does not apply to any proceedings taken under any act relative to any of her Majesty's regular or auxiliary forces, or where the fine is inflicted under an act which carries into effect a treaty with a foreign state, stipulating for a fine of a minimum amount (*y*).

And where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the court may dispense with any such requirement or any part thereof.

And where a court of summary jurisdiction has authority under an act of parliament other than this act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that court when adjudicating on such offence may, notwithstanding, if the court think that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding twenty-five pounds, and not being of such an amount as will subject the offender under the provisions of this act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the act authorizing the said imprisonment.

5. The period of imprisonment imposed by a court of summary jurisdiction under this act, or under any other act, whether past or future, in respect of the nonpayment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past act, be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say,

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction, The said period shall not exceed

| | |
|---|----------------|
| Does not exceed ten shillings | Seven days. |
| Exceeds ten shillings but does not exceed one pound | Fourteen days. |
| Exceeds one pound but does not exceed five pounds | One month. |
| Exceeds five pounds but does not exceed twenty pounds | Two months. |
| Exceeds twenty pounds | Three months. |

And such imprisonment shall be without hard labour, except where hard labour is authorized by the act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorized by the said act.

6. Where under any act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction shall be recovered in the manner in which a sum declared by this act to be a civil debt recoverable summarily is recoverable under this act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise.

7. A court of summary jurisdiction, by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things; namely,—

- (1.) Allow time for the payment of the said sum; and
- (2.) Direct payment to be made of the said sum by instalments; and
- (3.) Direct that the person liable to pay the said sum shall

Scale of imprisonment for non-payment of money.
Page 276.

Sum recoverable by summary order to be recoverable as a civil debt.

Payment by instalments or security taken for payment of money.

Page 221.

be at liberty to give to the satisfaction of that court, or of such other court of summary jurisdiction, or such person as may be specified by that court, security with or without a surety or sureties for the payment of the said sum or of any instalment thereof, and such security may be given and enforced in manner provided by this act.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A court of summary jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court; and every person to whom any such sum or instalment is paid, where not the clerk of the court of summary jurisdiction, shall as soon as may be account for and pay over the same to that clerk.

Provision as to costs in the case of small fines.
Page 228.

8. Where a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Enforcing of recognizances by court of summary jurisdiction.
Page 241.

9. (1.) Where a recognizance is conditioned for the appearance of a person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before a court of summary jurisdiction, or in a proceeding in a court of summary jurisdiction, such court, if the said recognizance appears to the court to be forfeited, may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance in the same manner as if the sum were a fine adjudged by such court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction:

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said court of summary jurisdiction, or any other court of summary jurisdiction for the same county, borough, or place, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the court for the future performance of the condition of the recognizance, and paying or giving

security for payment of the costs incurred in respect of the forfeiture, or upon such other conditions as the court may think just.

(2.) Where a recognizance conditioned to keep the peace or to be of good behaviour, or not to do or commit some act or thing, has been entered into by any person as principal or surety before a court of summary jurisdiction, that court or any other court of summary jurisdiction acting for the same county, borough, or place, upon proof of the conviction of the person bound as principal by such recognizance of any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

(3.) Except where a person seeking to put in force a recognizance to keep the peace or to be of good behaviour, by notice in writing, requires such recognizance to be transmitted to a court of general or quarter sessions, the recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to general or quarter sessions.

(4.) All sums paid in respect of a recognizance declared or adjudged by a court of summary jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such court, and shall be paid and applied by him in the manner in which fines imposed by such court, in respect of which fines no special appropriation is made, are payable and applicable.

10. (1.) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment :

Summary trial of children for indictable offences, unless objected to by parent or guardian.

Provided that—

- (a) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and
- (b) Where imprisonment is awarded, the term shall not in any case exceed one month; and
- (c) Where a fine is awarded, the amount shall not in any case exceed forty shillings; and
- (d) When the child is a male the court may, either in addition to or instead of any other punishment, adjudge

the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2.) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect : "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view so far as is practicable of securing his attendance at the hearing of the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4.) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

Summary
trial with con-
sent of young
persons
(juvenile of-
fenders).

11. (1.) Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the first column of the first schedule to this act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months ; and if the young person is a male,

and, in the opinion of the court, under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this act, adjudge such young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person.

(2.) For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3.) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

12. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the second column of the first schedule to this act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding twenty pounds.

Summary trial with consent of adult.

For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the person

Summary
conviction
on plea of
guilty of
adult.

to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

13. (1.) Where a person who is an adult is charged before a court of summary jurisdiction with an indictable offence which is specified in the first column of the first schedule to this act, and is not comprised in the second column of that schedule, and the court at any time during the hearing of the case become satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and further are satisfied (either after such a remand as is provided by this act or otherwise) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this act, then the court shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2.) The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course; with a statement, if the court thinks such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily or in the usual course, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury. The court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(3.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a justice constituting or forming part of the

court, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same.

14. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the first schedule to this act, and it appears to the court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily in pursuance of this act. Restriction on summary dealing with adult charged with indictable offence.

15. A child on summary conviction for an offence punishable on summary conviction under this act, or under any other act, whether past or future, shall not be imprisoned for a longer period than one month nor fined a larger sum than forty shillings. Restriction on punishment of child for summary offence.

16. If upon the hearing of a charge for an offence punishable on summary conviction under this act, or under any other act, whether past or future, the court of summary jurisdiction think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,— Page 221. Power of court to discharge accused without punishment. Page 165.

(1.) The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable : or

(2.) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable :

Provided that this section shall not apply to an adult convicted in pursuance of this act of an offence of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction.

17. (1.) A person when charged before a court of summary jurisdiction with an offence, in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not Right to claim trial by jury in case of offences otherwise

triable summarily.

Page 118.

an assault, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and if the person so charged is committed for trial, or bailed to appear for trial, shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

(2.) A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him to the following effect : " You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury ; do you desire to be tried by a jury ? " with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of being dealt with summarily, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury.

(3.) This section shall not apply to the case of a child unless the parent or guardian of the child is present ; but the court shall ascertain whether the parent or guardian of the child is present, and if he is, shall address the above question to such parent or guardian, and the claim under this section may be made by such parent or guardian.

Imprisonment in cases of cumulative sentences not to exceed six months.

Appeal from summary conviction to general or quarter sessions.

Page 282.

18. A court of summary jurisdiction shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months.

19. Where in pursuance of any act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as herein-after mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said act, appeal to a court of general or quarter sessions against such conviction or order :

Provided that this section shall not apply where the im-

prisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

20. (1.) A case arising under this act, or under any other act, whether past or future, shall not be heard, tried, determined, or adjudged by a court of summary jurisdiction, except when sitting in open court (z).

(2.) Open court means a petty sessional court-house or an occasional court-house.

* * * * *

(4.) An occasional court-house means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house.

(5.) The justices of a petty sessional division of a county shall from time to time, at a sessions of which notice has been given to every justice of such division, appoint police stations or other places other than the petty sessional court-house, to be used as occasional court-houses, at which cases may be heard, tried, determined and adjudged, and they may from time to time at such a sessions as aforesaid vary any police station or place so appointed, and shall cause public notice to be given in such manner as they think expedient of every police station or place for the time being appointed to be used as an occasional court-house.

* * * * *

(7.) Where a case arising under this act, or under any other act, whether past or future, is heard, tried, determined and adjudged by a court of summary jurisdiction sitting in an occasional court-house, the period of imprisonment imposed by the conviction or order of such court shall not exceed fourteen days, and the sum adjudged to be paid by the conviction or order of such court shall not exceed twenty shillings; and a justice of the peace when sitting alone in a petty sessional court-house shall not have power to impose any greater term of imprisonment or adjudge any larger sum to be paid than is above mentioned.

(8.) An indictable offence dealt with summarily in pursuance of this act shall not be heard, tried, determined or adjudged except by a petty sessional court sitting on some day appointed for hearing indictable offences, of which public notice has been given in such manner as to the justices of the petty sessional division seem expedient, or at some adjournment of such court.

(9.) Any case arising under this act, other than such indictable offence as aforesaid, and any case arising under any future act which is triable by a court of summary jurisdiction, shall,

(z) This provision has no reference to such business as signing of summons or attesting of recruits.

unless it is otherwise prescribed, be heard, tried, determined and adjudged by a court of summary jurisdiction consisting of two or more justices.

(10.) The lord mayor of the city of London, and any alderman of the said city, and any metropolitan or borough police magistrate or other stipendiary magistrate, when sitting in a court-house or place at which he is authorized by law to do alone any act authorized to be done by more than one justice of the peace, shall, for the purposes of this act, be deemed to be a court of summary jurisdiction consisting of two or more justices, and also to be a court of summary jurisdiction sitting in a petty sessional court-house, and is in this act included in the expression "petty sessional court."

(11.) A court of summary jurisdiction, when not a petty sessional court, may, without prejudice to any other power of adjournment which the court may possess, adjourn the hearing of any case to the next practicable sitting of a petty sessional court in the same manner in all respects as a justice is authorized to adjourn the hearing of a case under section sixteen of the Summary Jurisdiction Act, 1848.

11 & 12 Vict.
c. 43.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

Page 267.

21. (1.) A court of summary jurisdiction to whom application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for nonpayment of a sum of money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

(2.) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

(3.) Where a person is adjudged by the conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, to pay any sum of money, and on default of payment of such sum a warrant of distress is authorized to be issued, and it appears to the court of summary jurisdiction to whom application is made to issue such warrant that such person has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, such court, instead of issuing such warrant of distress, may, if it think fit, order the said person on nonpayment of the said sum to be imprisoned for

Page 244.

any period not exceeding the period for which he is liable under such conviction or order to be imprisoned in default of sufficient distress.

(4.) Where on application to a court of summary jurisdiction to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction of any court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, or for default of sufficient distress to satisfy any such sum, it appears to the court to whom the application is made that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.

Supplemental Provisions.

22. (1.) The clerk of every court of summary jurisdiction shall keep a register of the minutes or memorandums of all the convictions and orders of such court, and of such other proceedings as are directed by a rule under this act to be registered, and shall keep the same with such particulars and in such form as may be from time to time directed by a rule under this act. Register of court of summary jurisdiction.

(2.) Such register, and also any extract from such register certified by the clerk of the court keeping the same to be a true extract, shall be *prima facie* evidence of the matters entered therein for the purpose of informing a court of summary jurisdiction acting for the same county, borough or place as the court whose convictions, orders and proceedings are entered in the register; but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3.) The register kept by any particular clerk, in pursuance of this section, may be distinguished by the name of his petty sessional division, or by such name or description as may be directed by a rule under this act.

(4.) The entries relating to each minute, memorandum

proceeding shall be either entered or signed by the justice or one of the justices constituting the court by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had, except that when a court of summary jurisdiction is not a petty sessional court a return signed as aforesaid, and made and entered in the register in manner provided by a rule under this act, shall suffice.

(5.) Every sum paid to the clerk of a court of summary jurisdiction in accordance with the Summary Jurisdiction Acts, and the appropriation of such sum shall be entered and authenticated in such manner as may be from time to time directed by a rule under this act.

(6.) Every such register shall be open for inspection, without fee or reward, by any justice of the peace, or by any person authorized in that behalf by a justice of the peace or by a secretary of state.

Regulations
as to securi-
ties taken in
pursuance of
act.

23. (1.) A person shall give security under this act, whether as principal or surety, either by the deposit of money with the clerk of the court, or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this act, and evidence of such security may be provided by entry thereof in the register under this act of proceedings of a court of summary jurisdiction, or otherwise as may be directed by such rule.

(2.) Any sum which may become due in pursuance of a security under this act from a surety shall be recoverable summarily, in manner directed by this act with respect to a civil debt, on complaint by a constable or by the clerk of the court directing such security to be given, or by some other person authorized for the purpose by that court or any other court of summary jurisdiction for the same county, borough or place.

(3.) A court of summary jurisdiction may enforce payment of any sum due by a principal in pursuance of a security under this act which appears to such court to be forfeited, in like manner as if that sum were adjudged by a court of summary jurisdiction to be paid as a fine which the statute provides no mode of enforcing, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged by a court of summary jurisdiction to be paid as a civil debt ; provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this act, and subject thereto by the court authorizing the security, or by

any court to whom application is made for the issue of the warrant.

(4.) Any sum paid by a surety on behalf of his principal in respect of a security under this act, together with all costs, charges and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due to him from the principal, and may be recovered before a court of summary jurisdiction in manner directed by this act with respect to the recovery of a civil debt which is recoverable summarily.

(5.) Where security is given under this act for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

24. (1.) Where a person is charged before a court of summary jurisdiction with an indictable offence, with which a court of summary jurisdiction has or may have under the circumstances in this act mentioned power to deal summarily, the court before whom such person is charged, without prejudice to any other power that it may possess,—

Power of court of summary jurisdiction to remand for indictable offences.

(a) may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused ; and

(b) if such court is not at the time of the charge a petty sessional court, and the court think the case proper to be dealt with summarily, may adjourn the case and remand the person accused until the next practicable sitting of a petty sessional court.

(2.) A person may be remanded under this section in like manner in all respects as a person accused of an indictable offence may be remanded under section twenty-one of the act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-two, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to persons charged with indictable offences," with this addition, that where he is remanded to the next practicable sitting of a petty sessional court he may be remanded for more than eight days.

25. The power of a court of summary jurisdiction, upon complaint of any person, to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised by an order upon complaint, and the Summary Jurisdiction Acts shall apply accordingly, and the complainant and defendant and witnesses may be called and examined and cross-

Procedure before court of summary jurisdiction in case of sureties to keep the peace.

examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

The court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court, six months, and if the court be a court of summary jurisdiction other than a petty sessional court, fourteen days.

Power of
petty sessional
court with
respect to
varying order
for sureties.

26. Where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties, any petty sessional court for the same county, borough or place may, on application made to them in manner directed by a rule made in pursuance of this act, by him or by someone acting on his behalf, inquire into the case of the person so committed, and if upon new evidence produced to such court or proof of a change of circumstances the court think, having regard to all the circumstances of the case, that it is just so to do, they may reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court may think just.

Regulations
as to indict-
able offences
dealt with
summarily.

27. Where an indictable offence is under the circumstances in this act mentioned authorized to be dealt with summarily,—

- (1.) The procedure shall, until the court assume the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assume the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of the acts relating to offences punishable on summary conviction shall apply accordingly; and
- (2.) The evidence of any witness taken before the court assumed the said power need not be taken again, but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination; and
- (3.) The conviction for any such offence shall be of the same effect as a conviction for the offence on indictment, and the court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried if he had been tried on indictment; and
- (4.) Where the court have assumed the power to deal with the case summarily, and dismiss the information, they shall, if required, deliver to the person charged, a

copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence ; and

- (5.) The conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent or guardian, and in the case of any other person of the consent of such person, to be tried by a court of summary jurisdiction ; and
- (6.) The order of dismissal shall be transmitted to and filed by the clerk of the peace in like manner as the conviction is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused.

28. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this act by a court of summary jurisdiction, the expenses of the prosecution of such offence shall be payable in manner provided by this section. Costs of prosecution of indictable offences dealt with summarily.

The court dealing summarily with any such indictable offence may, if it seem fit, grant to any person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court may deem reasonable for his expenses, trouble and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made by a secretary of state with respect to the payment of costs in the case of indictable offences ; and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace for filing the conviction, depositions and other documents required to be filed by him under this act, and such other expenses as are by law payable when incurred before a commitment for trial ; and every certificate so granted shall have the effect of an order of court for the payment of the expenses of a prosecution for felony, made in pursuance of the act of the seventh year of King George the fourth, chapter sixty-four, intituled "An Act for improving the administration of criminal justice in England," and the acts amending the same, and the amount named in such certificate shall be paid in like manner as the expenses specified in such order would have been paid.

Power of the Lord Chancellor to make rules.

11 & 12 Vict. c. 43.

11 & 12 Vict. c. 43.

11 & 12 Vict. c. 43.

Power to provide petty sessional court-house.

29. (1.) The Lord High Chancellor of Great Britain may from time to time make, and when made, rescind, alter and add to, rules in relation to the following matters, or any of them ; that is to say,

(a.) The giving security under this act ; and

(b.) The forms to be used under the Summary Jurisdiction Acts, or any of them, including the forms of any recognizance mentioned in this act ; and

(c.) The costs and charges payable under distress warrants issued by a court of summary jurisdiction ; and

(d.) Adapting to the provisions of this act and of the Summary Jurisdiction Act, 1848, the procedure before courts of summary jurisdiction under any act passed before the Summary Jurisdiction Act, 1848 ; and

(e.) Regulating the form of the account to be rendered by clerks of courts of summary jurisdiction of fines, fees and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account ; and

(f.) Any other matter in relation to which rules are authorized or required to be made under or for the purpose of carrying into effect this act.

(2.) The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other act.

(3.) Any rule purporting to be made in pursuance of this section shall be laid before both houses of parliament as soon as may be after it is made, if parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of parliament, and shall be judicially noticed.

30. Where the justices in general or quarter sessions assembled or the council of any borough have authority to hire or otherwise provide a fit and proper place for holding petty sessions of the peace, such justices or council shall have power to provide a petty sessional court-house within the meaning of this act, by the purchase or other acquisition of land and the erection of a proper building thereon ; and all enactments relating to the provision of such place and to the raising of the money for defraying the expense of the provision of such place shall apply accordingly (a).

(a) The power given by this section is extended by 47 & 48 Vict. c. 43, s. 8.

PART II.

Amendment of Procedure.

31. Where any person is authorized to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following :

Procedure on
appeal to
general or
quarter
sessions.

Page 282.

- (1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and
- (2.) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and
- (3.) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient ; and
- (4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody ; and
- (5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm,

reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

(6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Application of provisions respecting appeals to quarter sessions to appeals under prior acts.

32. Where any past act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded.

Appeal from court of summary jurisdiction by special case.

33. (1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the

court to state a special case setting forth the facts of the case Page 332. and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 38 & 39 Vict. 1875, and the acts amending the same; and, subject as afore- c. 77. said, the act of the session of the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, intituled "An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace," shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that act:

Provided that nothing in this section shall prejudice the statement of any special case under that act.

34. (1.) Where a power is given by any future act to a court Summary of summary jurisdiction of requiring any person to do or abstain orders. from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action which the court may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

(2.) A person making default in complying with an order of a court of summary jurisdiction in relation to any matter arising under any future act other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed, may, in the discretion of the court, be ordered to pay a sum (to be enforced as a civil debt recoverable summarily under this act) not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate twenty pounds.

Recovery of
civil debts in
court of sum-
mary juris-
diction

35. Any sum declared by this act, or by any future act, to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided as follows:

(1.) A warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint; and

(2.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid, or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of such court or of any other court of summary jurisdiction for the same county, borough or place, that the person making default in payment of such civil debt, instalment or costs either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same, and in any such case the court shall have the same power of imprisonment as a county court would for the time being have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that court, but shall not have any greater power.

32 & 33 Vict.
c. 62.

Proof of the means of the person making default may be given in such manner as the court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this act in relation to the summoning and examination of witnesses, or if no such rules are in force, to the rules for the like purpose made in pursuance of the Employers and Workmen Act, 1875.

38 & 39 Vict.
c. 90.

Summons of
witness when
out of the
jurisdiction of
a court of
summary
jurisdiction.

Page 120.

36. Where a court of summary jurisdiction for any county, borough or place would have power to issue a summons to a witness, if such witness were within the said county, borough or place, and such witness is believed to be within some other county, borough or place in England, such court may issue a summons to such witness in like manner as if such witness were within the jurisdiction of such court; and any court of summary jurisdiction for the county, borough or place in which

the witness may be, or be believed to be, may, on proof on oath, or such solemn declaration as provided by this act, of the signature to the summons, indorse the summons, and the witness, on service of the summons so indorsed and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be apprehended or otherwise proceeded against either in the county, borough or place in which the summons was issued, or in that in which the witness may happen to be, in manner directed by the Summary Jurisdiction Act, 1848, as if such witness had been duly summoned by a court of summary jurisdiction for the county, borough or place in which such witness is apprehended or proceeded against. 11 & 12 Vict. c. 43.

37. A warrant or summons issued by a justice of the peace under the Summary Jurisdiction Act, 1848, or any other act, whether past or future, or otherwise, shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office. Summons or warrant not avoided by death of justice, &c.

38. A person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken into custody, and if it is not or will not be practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is so taken into custody, a superintendent or inspector of police, or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector or officer to be of a serious nature, shall discharge the prisoner, upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before some court of summary jurisdiction at the day, time and place named in the recognizance (*l*). 11 & 12 Vict. c. 43. Bail of person arrested without a warrant.

39. The following enactments shall apply to proceedings before courts of summary jurisdiction ; (that is to say,) Provisions as to proceedings, &c.

1. The description of any offence in the words of the act, or any order, byelaw, regulation, or other document creating the offence, or in similar words, shall be sufficient in law ; and Page 199.

2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the act, order, byelaw, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or Page 198.

(*b*) As to power of borough constables to take bail, see s. 27 of 45 & 46 Vict. c. 50, s. 227.

complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and

3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same; and

4. A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought, and if the action is brought are paid into court in the action, and the plaintiff does not recover more than the sum so tendered and paid into court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs, to be taxed as between solicitor and client; and

5. All forfeitures not pecuniary which are incurred in respect of an offence triable by a court of summary jurisdiction, or which may be enforced by a court of summary jurisdiction, may be sold or disposed of in such manner as the court having cognizance of the case or any other court of summary jurisdiction for the same county, borough or place may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the act on which the proceeding for the forfeiture is founded.

Case from
quarter ses-
sions without
certiorari.

40. A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court.

Proof by
declaration of

41. In a proceeding within the jurisdiction of a court of summary jurisdiction, without prejudice to any other mode of

proof, service on a person of any summons, notice, process, or document required or authorized to be served, and the handwriting and seal of any justice of the peace or other officer or person on any warrant, summons, notice, process, or document, may be proved by a solemn declaration taken before a justice of the peace, or before a commissioner to administer oaths in the Supreme Court of Judicature, or before a clerk of the peace or a registrar of a county court; and any declaration purporting to be so taken shall, until the contrary is shown, be sufficient proof of the statements contained therein, and shall be received in evidence in any court or legal proceeding, without proof of the signature or of the official character of the person or persons taking or signing the same; and the fee, if any, for taking such declaration shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this act, and any such fee shall be costs in the matter or proceeding to which it relates.

The declaration may be in the form provided by a rule under this act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

42. When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance, notwithstanding anything in this or any other act, need not be entered into before such court, but may, subject to any rules made in pursuance of this act, be entered into by the parties before any other court of summary jurisdiction or before any clerk of a court of summary jurisdiction, or before a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the governor or other keeper of such prison; and thereupon all the consequences of law shall ensue, and the provisions of this act with respect to recognizances taken before a court of summary jurisdiction shall apply, as if the recognizance had been entered into before the said court as heretofore by law required.

43. The following regulations shall be enacted with respect to warrants of distress issued by a court of summary jurisdiction:

(1.) A warrant of distress shall be executed by or under the direction of a constable; and

(2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making the distress

service of
process, hand-
writing, &c.

Recognizances
taken out of
court.

Procedure on
the execution
of distress
warrants.

Page 255.

and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent ; and

- (3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid ; and
- (4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark ; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds ; and
- (5.) Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds ; and
- (6.) A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the clerk of the court of summary jurisdiction issuing the warrant ; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any reasonable time to be appointed by the court, and to take a copy of such account ; and
- (7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if

any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant; and

- (8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

44. Where any property has been taken from a person charged before a court of summary jurisdiction with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such court of summary jurisdiction of the fact of such property having been taken from the person charged and of the particulars of such property, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

Return by order of court of property taken from prisoner.

45. Where a person is charged with an indictable offence mentioned in the first schedule to this act before a court of summary jurisdiction for any county, borough or place, and the court have jurisdiction to commit such person for trial in such county, borough or place, although the offence was not committed therein, such court shall also have jurisdiction to deal with the offence summarily in pursuance of this act.

Local jurisdiction of court under this act.

46. For the purposes of the trial any offence punishable on summary conviction under this act, or under any other act, whether past or future, the following provisions shall have effect—

General provisions as to local jurisdiction of courts of summary jurisdiction.

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more courts of summary jurisdiction, such offence may be tried by any one of such courts.

Page 18 *et seq.*

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts of summary jurisdiction, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court of summary jurisdiction, such offence may be tried by any one of such courts.

(3.) Where the offence is committed on any person or in respect of any property in or upon any carriage, cart, or

vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court of summary jurisdiction through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the highway, road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts of summary jurisdiction, a person may be tried for such offence by any one of such courts.

(4.) Any offence which is authorized by this section to be tried by any court of summary jurisdiction may be dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

Application of
act to sums
leviable by
distress or
payable under
order.
11 & 12 Vict.
c. 43.

47. The provisions of this act with respect to a sum adjudged to be paid by an order shall apply, so far as circumstances admit, to a sum in respect of which a court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum were a civil debt; and the provisions of this act with respect to the hearing, trying, determining and adjudging of a case by a court of summary jurisdiction when sitting in open court shall apply to the hearing, trying, determining and adjudging by a court of summary jurisdiction of an application for the issue of any such warrant (b).

The provisions of this act with respect to the period of imprisonment to be imposed in respect of the nonpayment of a sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum, shall apply to the period of imprisonment to be imposed in respect of the nonpayment of any sum of money adjudged to be paid by an order of a court of summary jurisdiction or in respect of the default of a sufficient distress to satisfy any such sum, where such sum is not a civil debt nor enforceable as a civil debt.

(b) This section does not apply to cases where the warrant of distress is issued ministerially as in poor

rates, &c. R. v. Price, 49 L. J., M. C. 49, *post*, p. 519.

48. Anything required by this act to be done by to or before a clerk of a court of summary jurisdiction shall be done by to or before the salaried clerk to a petty sessional division under section five of the Justices Clerks Act, 1877, and where there is more than one such clerk, by either of such clerks or by such of those clerks as a court of summary jurisdiction for such division from time to time direct; and if any other person acts as the clerk to a court of summary jurisdiction acting in and for such division, such person, subject to any rules made under this act, shall be deemed for the purposes of this act to have acted as the deputy of such salaried clerk, and shall make a return to the said salaried clerk of all matters done by such court and of all matters which the clerk of the court is required to enter in a register or otherwise to record :

As to clerk of court of summary jurisdiction. 40 & 41 Vict. c. 43.

Provided, that nothing in this section shall apply where the court of summary jurisdiction is a court to whose clerk section five of the Justices Clerks Act, 1877, does not apply ; that is to say, the justices of a borough, or a metropolitan police court, or any stipendiary or other magistrate the salary of whose clerk is regulated under any act of parliament, other than the Justices Clerks Act, 1877, and the principal act therein mentioned.

40 & 41 Vict. c. 43.

40 & 41 Vict. c. 43.

49. In this act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them : that is to say,

Special definitions for purposes of the act.

The expression "secretary of state" means one of her Majesty's principal secretaries of state :

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years :

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years :

The expression "adult" means a person who in the opinion of the court before whom he is brought is of the age of sixteen years or upwards :

The expression "person" includes a child, young person, and adult, and also includes a body corporate :

The expression "guardian," in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such child :

The expression "prescribed" means prescribed or provided by any act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or matters, to

the punishment, recovery, making or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied :

The expression "past act" means any act passed before the commencement of this act, exclusive of this act :

The expression "future act" means any act passed after the commencement of this act :

The expression "fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction :

The expression "county" includes any county, riding, division, parts, or liberty of a county having a separate court of quarter sessions :

5 & 6 Will.
4, c. 76.

The expression "borough" means a borough subject to the provisions of the Municipal Corporations Act, 1882 (c), and the acts amending the same :

The expression "local rate" means as respects any county, borough or place, any county rate, borough rate, or other local rate out of which the costs of the prosecution of any felony committed within such county, borough or place are payable :

The expressions "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" respectively include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order.

50. (d)

Application of Acts.

Application
of Summary
Jurisdiction
Acts to future
acts.

51. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any future act : that is to say,

(1.) Where in any future act, any offence is directed or authorised to be prosecuted summarily or on summary conviction, or any fine is directed or authorized to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly ; and

(2.) Where in any future act any sum of money is directed or authorized to be recovered before a court of sum-

(c) See 45 & 46 Vict. c. 50, s. 242.

(d) This section dealt with general definitions. It is repealed by the

Interpretation Act, 1889, and re-enacted by s. 13, of that Act, *post*, p. 521

mary jurisdiction, or on complaint made to a court of summary jurisdiction, or words are used (whether by authorizing the sum to be recovered summarily or in a summary manner or otherwise) which imply that such sum of money is to be recovered before a court of summary jurisdiction or in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and

Where in any future act a court of summary jurisdiction is authorised to order or require a person to do or abstain from doing any act or thing other than the payment of a sum of money; or where in pursuance of any such act any act or thing other than the payment of a sum of money is required or authorized by an order of a court of summary jurisdiction to be done, or is declared capable of being enforced summarily, or by summary order; or where in any such act any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly.

Savings, and Construction.

52. The provisions of this act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, and in the case of imprisonment, to impose a fine in lieu of imprisonment, shall not apply to any proceedings taken under any act relating to any of her Majesty's regular or auxiliary forces.

Saving for army, navy, marine, and militia acts.

53. The Summary Jurisdiction Acts shall apply to all informations, complaints, and other proceedings before a court of summary jurisdiction under the statutes relating to the post office.

Application of Summary Jurisdiction Acts to post office, inland revenue, and customs.

The Summary Jurisdiction Acts shall, notwithstanding any special provisions to the contrary contained in any of the statutes relating to her Majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs, apply to all informations, complaints, and other proceedings before a court of summary jurisdiction under or by virtue of any of the said statutes:

Provided, that where the sum adjudged by conviction under or by virtue of any of the said statutes to be paid exceeds fifty pounds, the period of imprisonment imposed by a court

of summary jurisdiction in respect of the nonpayment of such sum, or in respect of the default of a sufficient distress to satisfy such sum, may exceed three months but shall not exceed six months.

Application
and construc-
tion of act.

54. This act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for nonpayment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy.

Nothing in this act shall authorize a court of summary jurisdiction to reduce the amount of a fine where the act prescribing such amount carries into effect a treaty, convention or agreement with a foreign state, and such treaty, convention or agreement stipulates for a fine of a minimum amount.

11 & 12 Vict.
c. 43.

This act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such acts respectively, and save as aforesaid shall be subject to the exceptions specified in section thirty-five of the Summary Jurisdiction Act, 1848 :

11 & 12 Vict.
c. 43.

11 & 12 Vict.
c. 43.

Provided that the provisions contained in sections thirty-three and thirty-four of the Summary Jurisdiction Act, 1848, as to the acts relating to the police in the metropolis and in the city of London, and relating to the powers of justices within the metropolitan police district, shall not apply to or restrict the operation of this act.

This act shall not apply to any information, complaint, or other summary proceeding laid, made, or instituted before the commencement of this act, or in respect of any offence committed, or any act done, or any cause which arose before the commencement of this act, and any such information, complaint, or other proceeding as aforesaid may be laid, made, instituted, and proceeded with in the same manner as if this act had not been passed.

Repeal.

Repeal of
acts.

55. There shall be repealed as from the commencement of this act—

(1.) The acts mentioned in the second schedule to this act to the extent in the third column of that schedule mentioned ; and

(2.) So much of any other act as is inconsistent with this act.

Provided that this repeal shall not affect—

- (1.) Anything duly done or suffered before the commencement of this act under any enactment hereby repealed ; or
- (2.) Any right or privilege acquired or any liability incurred before the commencement of this act under any enactment hereby repealed ; or
- (3.) Any imprisonment, fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this act under any enactment hereby repealed ; or
- (4.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for prosecuting any such offence or ascertaining, enforcing, or recovering any such liability, imprisonment, fine, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding, and remedy may be carried on as if this repeal had not been enacted.

Where any unrepealed act of parliament incorporates or refers to any provisions of any act hereby repealed, such unrepealed act shall be deemed to incorporate or refer to the corresponding provisions of this act.

SCHEDULES.

FIRST SCHEDULE.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

| First Column. Young Persons consenting and Adults pleading Guilty. | Second Column. Adults consenting. |
|--|--|
| 1. Simple larceny. | 1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 2. Offences declared by any Act for the time being in force to be punishable as simple larceny. | 2. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured, or otherwise dealt with by the offender does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 3. Larceny from or stealing from the person. | 3. Larceny from or stealing from the person, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 4. Larceny as a clerk or servant. | 4. Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 5. Embezzlement by clerk or servant. | 5. Embezzlement by a clerk or servant, where the value of the whole of the property alleged to have been embezzled does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861 (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six), or in either of such sections. | 6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861 (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-six), or in either of such sections, where the value of the whole of the property alleged to have been received does not in the opinion of the court before whom the charge is brought exceed forty shillings. |

| FIRST COLUMN. Young Persons consenting and Adults pleading Guilty. | SECOND COLUMN. Adults consenting. |
|---|---|
| 7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant. | 7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed forty shillings. |
| 8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant. | 8. Attempt to commit simple larceny or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant. |

This Act shall apply to any of the following offences when alleged to have been committed by a young person in like manner as if such offence were included in the first column of the schedule; that is to say,

- (1.) To any offence in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person"; and
- (2.) To any offence relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Malicious Injuries to Property"; and
- (3.) To any indictable offence, either under the Post Office Laws or prosecuted by her Majesty's Postmaster-General; and for the purpose of this provision the expression "Post Office Laws" has the same meaning as it has in the Act of the session of the seventh year of the reign of King William the Fourth and the first year of the reign of her present Majesty, chapter thirty-six, intituled "An Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the Judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws," and the Acts amending the same.

SECOND SCHEDULE.

| Session and Chapter. | Title. | Extent of Repeal. |
|----------------------|--|--|
| 10 & 11 Vict. c. 82. | An Act for the more speedy Trial and Punishment of Juvenile Offenders. | The whole Act. |
| 11 & 12 Vict. c. 43. | An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and orders. | The following words in section thirty-five : "Nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office." |
| 13 & 14 Vict. c. 37. | An Act for the further extension of Summary Jurisdiction in cases of Larceny. | The whole Act, in so far as relates to England. |
| 18 & 19 Vict. c. 126 | An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain cases. | The whole Act, in so far as relates to England, except sections eighteen, twenty, twenty-two, twenty-three, and twenty-four. |
| 27 & 28 Vict. c. 80. | An Act to extend the Provisions of the Criminal Justice Act, 1855, to the Liberties of the Cinque Ports, and to the District of Romney Marsh, in the County of Kent. | The whole Act. |
| 27 & 28 Vict. c. 110 | An Act for the Amendment of the Law relating to the Mitigation of Penalties. | The whole Act, so far as relates to England. |
| 28 & 29 Vict. c. 127 | An Act to amend the Law relating to Small Penalties. | The whole Act. |
| 31 & 32 Vict. c. 116 | An Act to amend the Law relating to Larceny and Embezzlement. | Section two, in so far as relates to England. |
| 34 & 35 Vict. c. 78. | An Act to amend the Law respecting the Inspection and Regulation of Railways. | Section thirteen, in so far as relates to England. |

THE SUMMARY JURISDICTION (PROCESS) ACT, 1881.
(44 & 45 VICT, C. 24.)

An Act to amend the Law respecting the service of Process of Courts of Summary Jurisdiction in England and Scotland.
[18th July, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This act may be cited as the Summary Jurisdiction (Pro- Short title.
cess) Act, 1881.

This act shall be deemed to be included in the expressions "Summary Jurisdiction Acts" and "Summary Jurisdiction (English) Acts."

2. This Act shall not apply to Ireland.

Extent of Act.

3. This act shall come into operation on the first day of Commence-
October, 1881 (which day is in this act referred to as the com- ment of Act.
mencement of this act).

4. Subject to the provisions of this act, any process issued Service of
under the Summary Jurisdiction Acts may, if issued by a court process of
of summary jurisdiction in England and endorsed by a court of English court
summary jurisdiction in Scotland, or issued by a court of sum- in Scotland
mory jurisdiction in Scotland and endorsed by a court of and of Scotch
summary jurisdiction in England, be served and executed within court in
the jurisdiction of the endorsing court in like manner as it may England.
be served and executed within the jurisdiction of the issuing
court, and that by an officer either of the issuing or of the
endorsing court.

For the purposes of this act—

(1.) Any process may be issued and endorsed under the hand
of any such person as is declared by this act to be a
court of summary jurisdiction, and may be endorsed
upon proof alone of the handwriting of the person
issuing it, and such proof may be either on oath or
by such solemn declaration as is mentioned in section
forty-one of the Summary Jurisdiction Act, 1879, or
by any like declaration taken in Scotland before a
sheriff, justice of the peace, or other magistrate having
the authority of a justice of the peace. Such indorse-
ment may be in the form contained in the schedule
to this act annexed, or in a form to the like effect :

(2.) Where any process requiring the appearance of a person
to answer any information or complaint has been
served in pursuance of this section, the court, before

issuing a warrant for the apprehension of such person for failure so to appear, shall be satisfied on oath that there is sufficient *primâ facie* evidence in support of such information or complaint :

(3.) If the process is to procure the attendance of a witness, the court issuing the process shall be satisfied on oath of the probability that the evidence of such witness will be material, and that the witness will not appear voluntarily without such process, and the witness shall not be subject to any liability for not obeying the process, unless a reasonable amount for his expenses has been paid or tendered to him :

(4.) This act shall not apply to any process requiring the appearance of a person to answer a complaint if issued by an English court of summary jurisdiction for the recovery of a sum of money which is a civil debt within the meaning of the Summary Jurisdiction Act, 1879, or if issued by a Scotch court in a case which falls within the definition of "civil jurisdiction" contained in the Summary Procedure Act, 1864.

Provision as
to execution
of process.

5. Where a person is apprehended under any process executed in pursuance of this act, such person shall be forthwith taken to some place within the jurisdiction of the court issuing the process, and be there dealt with as if he had been there apprehended.

A warrant of distress issued in England when endorsed in pursuance of this Act shall be executed in Scotland as if it were a Scotch warrant of poinding and sale, and a Scotch warrant of poinding and sale when endorsed in pursuance of this act shall be executed in England as if it were an English warrant of distress, and the enactments relating to the said warrants respectively shall apply accordingly, except that any account of the costs and charges in connection with the execution, or of the money levied thereby or otherwise relating to the execution, shall be made, and any money raised by the execution shall be dealt with in like manner as if the warrant had been executed within the jurisdiction of the court issuing the warrant.

Provision as
to bastardy
proceedings
in England¹
and Scotland.

6. A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order of decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily

resides, where the court is English, in Scotland, or where the court is Scotch in England, in like manner as the court has jurisdiction in any other case.

Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this act with respect to process of a court of summary jurisdiction.

Any bastardy order of a court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court.

7. This act shall be in addition to and not in derogation of Saving. any power existing under any other act relating to the execution of any warrant or other process in England and Scotland respectively.

8. In this act, unless the context otherwise requires,—

Definitions.

The expression “process” includes any summons or warrant of citation to appear either to answer any information or complaint, or as a witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale, also any order or minute of a court of summary jurisdiction or copy of such order or minute, also an extract decree, and any other document or process, other than a warrant of arrestment, required for any purpose connected with a court of summary jurisdiction to be served or executed.

The expression “Summary Jurisdiction Acts” as regards England has the same meaning as in the Summary Jurisdiction Act, 1879, and as regards Scotland, means the Summary Procedure Act 1864, and any act, past or future, amending that Act.

42 & 43 Vict.
c. 49.
27 & 28 Vict.
c. 53.

The expression “sheriff” shall include sheriff substitute.

The expression “court of summary jurisdiction” means any justice of the peace, also any officer or other magistrate having the authority in England or Scotland of a justice of the peace, also in Scotland the sheriff.

The expression “officer of a court of summary jurisdiction” means the constable, officer, or person to whom any process issued by the court is directed, or who is by law required or authorized to serve or execute any process issued by the court.

SCHEDULE.

INDORSEMENT IN BACKING A PROCESS.

WHEREAS proof hath this day been made before me, one of Her Majesty's justices of the peace [sheriff or other magistrate] for the [county or burgh] of _____, that the name of *A.B.* to the within warrant [or summons or order or minute, or copy of order or minute or other document] subscribed is of the handwriting of the justice of the peace [sheriff or other magistrate] within mentioned, I do therefore hereby authorize *C.D.* who bringeth to me this warrant [or summons or order or minute, or copy of order or minute or other document], and all other persons by whom the same may be lawfully served [or executed], and also all constables and other peace officers of the said [county or burgh] of _____ to serve and execute the same within the said last-mentioned [county or burgh].

Given under my hand this _____ day of _____ 18 .

THE SUMMARY JURISDICTION ACT, 1884.
(47 & 48 VICT. C. 43.)

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Commencement of Act.
3. Repeal of obsolete punishments for nonpayment of fines and other sums of money.
4. Repeal of Acts in schedule.
5. Removal of doubts as to application of Summary Jurisdiction Acts.
6. Application of provisions of 42 & 43 Vict. c. 49, respecting appeals to appeals under prior Acts.
7. Removal of doubt as to 42 & 43 Vict. c. 49, s. 50.
8. Extension of 42 & 43 Vict. c. 49, s. 30.
9. Removal of doubts as to effect of 45 & 46 Vict. c. 50, s. 227, or 42 & 43 Vict. c. 49, s. 38.
10. Saving for the recovery of poor rates, &c.
11. Recovery of payments certified by district auditors.
12. Effect of forms.

SCHEDULE.

An Act to repeal divers Enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the uniformity of Proceedings before those Courts.
[7th August, 1884.]

those courts to courts of quarter sessions, and it is expedient to provide for uniformity of procedure in all such cases :

12 & 13 Vict.
c. 45.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

42 & 43 Vict.
c. 49.

1. This Act may be cited as the Summary Jurisdiction Act, Short title. 1884.

2. This Act shall come into operation on the first day of December, 1884. Commencement of Act.

3. Whereas the Summary Jurisdiction Acts provide for the imprisonment of a person for the nonpayment in certain cases of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction, and it is expedient to repeal so much of any enactment as provides the punishment of whipping or any punishment other than imprisonment, with or without hard labour, provided for such nonpayment : Be it therefore enacted that—

Repeal of
obsolete
punishments
for nonpay-
ment of fines
and other
sums of
money.

So much of any Act as enacts that a person on nonpayment of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction in England shall be liable to be whipped or to any other punishment than imprisonment, with or without hard labour, is hereby repealed.

4. The Acts contained in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned. Repeal of Acts in schedule.

Provided that—

(1.) Where an enactment extends beyond England that enactment shall be repealed only as regards England ; and

(2.) The expression in the said schedule "conviction or order of a court of summary jurisdiction" shall mean a conviction or order made in pursuance of the Summary Jurisdiction Acts ; and

(3.) This repeal shall not revive any enactment repealed by any of the repealed Acts, nor shall it affect—

(a.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed ; or

(b.) Any legal proceeding or appeal commenced, or any writ, warrant, or instrument made or issued before the commencement of this Act ;

and any such legal proceeding, appeal, writ, warrant, and instrument may be carried on and executed as if this Act had not passed.

A reference in any Act of Parliament or other document to any enactment repealed by this Act, whether incorporating or

Removal of doubts as to application of Summary Jurisdiction Acts.

applying such enactment or otherwise, shall be construed to refer to the corresponding enactment in the Summary Jurisdiction Acts, and so far as there is no such corresponding enactment shall be repealed.

5. Whereas doubts may arise as to whether the Summary Jurisdiction Acts apply, or will, after the repeal enacted by this Act takes effect, apply to the proceedings before justices referred to in the sections mentioned in the third column of the schedule to this Act, and it is expedient to remove such doubts: Be it therefore enacted that—

The repeal enacted by this Act shall not take away any jurisdiction of any justices to act summarily in any matter referred to in an enactment hereby repealed, and the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to every proceeding before justices as to which the procedure is wholly or partly repealed by this Act in substitution for the procedure so repealed.

And for the further removal of doubts it is hereby declared that where by virtue of the repeal enacted by this Act or otherwise any statute authorising the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

11 & 12 Vict.
c. 43.
42 & 43 Vict.
c. 49.

Application of provisions of 42 & 43 Vict. c. 49, respecting appeals to appeals under prior Acts.

6. Where a person is authorized by any Act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those Acts, to a court of general or quarter sessions, he shall after the passing of this Act appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions.

7. (e).

Extension of 42 & 43 Vict. c. 49, s. 30.

8. Whereas doubts have arisen whether under the thirtieth section of the Summary Jurisdiction Act, 1879, the justices or council therein mentioned have power to provide more than one petty sessional court-house, and it is expedient that such doubts should be removed: Be it therefore enacted as follows:

It is hereby declared that the power of the thirtieth section of the Summary Jurisdiction Act, 1879, given to the justices or

(e) Repealed by Interpretation Act, 1889, and re-enacted by s. 13, of that Act, *post*, p. 521.

council therein mentioned to provide a petty sessional court-house shall be deemed to extend to providing more than one such petty sessional court-house if the justices or council shall think it necessary or expedient so to do.

And for the further removal of doubts it is hereby declared that a petty sessional court-house or occasional court-house for the use of the justices of any county may be outside the limits of the petty sessional division for which such court-house is provided or appointed, and may be either in the said county, or in any adjoining county or borough, and for the purpose of the jurisdiction of any justices acting in such court-house the same shall be deemed to be within the county and the petty sessional division for which such justices act.

9. Nothing in section two hundred and twenty-seven of the Municipal Corporations Act, 1882, shall be taken to have repealed section thirty-eight of the Summary Jurisdiction Act, 1879.

Removal of doubts as to effect of 45 & 46 Vict. c. 50, s. 227, on 42 & 43 Vict. c. 49, s. 38.

10. Nothing in this Act shall alter the procedure for the recovery of or any remedy for the nonpayment of any poor rate, or of any rate or sum the payment of which is not adjudged by the conviction or order of a court of summary jurisdiction.

Saving for the recovery of poor rates, &c.

11. The payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate.

Recovery of payments certified by district auditors.

12. Whereas by section twenty-nine of the Summary Jurisdiction Act, 1879, the Lord Chancellor is authorized from time to time to make rules in relation to the forms to be used under the Summary Jurisdiction Acts or any of them, and to annul and to add to forms in relation to summary proceedings contained in other Acts, and doubts have arisen with respect to the effect of the forms altered by such rules, and it is expedient to remove such doubts: Be it therefore enacted that—

Effect of forms.

A form authorized by any rules for the time being in force in pursuance of the said section shall be of the same effect as if it were contained in the Summary Jurisdiction Act, 1848, or in any other Act to which the form is made applicable.

11 & 12 Vict. c. 43.

THE PROBATION OF FIRST OFFENDERS ACT, 1887.
(50 & 51 VICT. C. 25.)

An Act to permit the conditional Release of First Offenders in certain cases. [8th August, 1887.]

Whereas it is expedient to make provision for cases where the reformation of persons convicted of first offences may, by reason of the offender's youth or the trivial nature of the offence, be brought about without imprisonment :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to court to release upon probation of good conduct instead of sentencing to punishment.
Page 166.

1.—(1.) In any case in which a person is convicted of larceny or false pretences, or any other offence punishable with not more than two years imprisonment before any court, and no previous conviction is proved against him, if it appears to the court before whom he is so convicted that, regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court may direct, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

(2.) The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as may be directed by the court.

Provision in case of offender failing to observe conditions of his recognizances.

2.—(1.) If a court having power to deal with the offender in respect of his original offence, or any court of summary jurisdiction, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2.) An offender, when apprehended on any such warrant, shall, if not brought forthwith before the court having power to sentence him, be brought before a court of summary jurisdiction, and that court may either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or may admit him to bail with a sufficient surety conditioned on his appearing for judgment.

(3.) The offender when so remanded may be committed to a prison, either for the county or place in or for which the court remanding him acts, or for the county or place where he is bound to appear for judgment, and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release.

3. The court, before directing the release of an offender under this Act, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. Conditions as to abode of the offender.

4. In this Act the term "court" includes a court of summary jurisdiction. Definition of "court."

5. This Act may be cited as the Probation of First Offenders Act, 1887. Short title.

THE INTERPRETATION ACT, 1889. (52 & 53 VICT. C. 63.)

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:— Judicial definitions in past and future Acts.

(1.) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof.

(2.) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3.) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

(4.) The expression "Court of Assize" shall, as respects England, Wales, and Ireland, mean a court of assize, a court of oyer and terminer, and a court of gaol delivery, or any of them, and shall, as respects England and Wales, include the Central Criminal Court.

* * * * *

(6.) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of

justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

11 & 12 Vict.
c. 43.
42 & 43 Vict.
c. 49.
27 & 28 Vict.
c. 53.
44 & 45 Vict.
c. 33.

(7.) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.

(8.) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.

14 & 15 Vict.
c. 93.

(9.) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

(10.) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11.) The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

(12.) The expression "petty sessional court" shall, as respects England or Wales, mean a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house, and shall include the Lord Mayor of the city of London, and any alderman of that city, and any metropolitan or borough police magistrate or other stipendiary magistrate when sitting in a court-house or place at which he is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(13.) The expression "petty sessional court-house" shall, as respects England or Wales, mean a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such a court-house or place, and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty

sessional division, shall mean any such court-house or place. The expression shall also include any court-house or place at which the Lord Mayor of the city of London or any alderman of that city, or any metropolitan or borough police magistrate or other stipendiary magistrate is authorized by law to do alone any act authorized to be done by more than one justice of the peace.

(14.) The expression "court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions.

II. RULES.

THE SUMMARY JURISDICTION RULES, 1886.

CONTENTS.

1. Short title.
2. Commencement.
3. Register.
4. Special appropriation of fine under a statute.
5. Returns.
6. Form of account of fines, &c.
7. Rule as to sums of which payment is deferred or to be made by instalments.
8. Provision for dispensing with unnecessary accounts.
9. Entry of receipts by clerk.
10. Remitted fees book.
11. Crown fines.
12. Application of sum due under forfeited security.
13. Taking of recognizances by Governor of prison.
14. Form of security under Act.
15. Security book.
16. Notice to principal of forfeiture of security.
17. Mode of application to vary order for sureties.
18. Time for stating special case.
19. Particulars of claim for civil debt.
20. Judgment summons.
21. Service of judgment summons.
22. Issue and proof of service of judgment summons.
23. Time of service.
24. Adjournment of hearing of judgment summons.
25. Witnesses on judgment summons.
26. Date of order of commitment.
27. Payment by judgment debtor.
28. Discharge of judgment debtor.
29. Costs of Plaintiff in enforcing order.
30. Fee for taking declaration.
31. Forms.
32. Annulment of forms and rules.

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|--------------------|---|
| Short title. | 1. These Rules may be cited as the Summary Jurisdiction Rules, 1886. |
| Commence- ment. | 2. These Rules shall come into operation on the first day of January, 1887. |
| Register. | 3. The clerk of each Court of Summary Jurisdiction shall keep the register required to be kept by him in pursuance of |

the Summary Jurisdiction Act, 1879, with such particulars as appear by the form in Part III. of the Schedule hereto.

4. Where in pursuance of any statute a Court of Summary Jurisdiction specially directs the appropriation of a fine, the statute under which the appropriation is made shall be set forth in the register and authenticated by the signature of the justice or one of the justices constituting the Court. Special appropriation of fine under a statute.

5. The return referred to in section twenty-two, sub-section (4) of the Summary Jurisdiction Act, 1879, shall contain the particulars required to be entered in the register. The justice signing any such return shall cause it to be sent to the clerk who keeps the register for his Petty Sessional Division, and that clerk shall enter the return in his register. Returns.

6. The form of account to be rendered by clerks of Courts of Summary Jurisdiction of fines, fees, and other sums received by them shall be the form given in Part III. of the Schedule hereto, or a form to the like effect approved by the local authority under the Justices Clerks Act, 1877, and shall render quarterly or at any less interval as may be directed by that authority. Provided that nothing in this Rule shall apply to the Police Courts of the Metropolis Chatham, or Sheerness. Form of account of fines.

7. All fines imposed by a Court of Summary Jurisdiction shall appear in this account in chronological order, and where payment is deferred or to be made by instalments, the fact shall be shown in the column headed "Remarks." When the whole of the sum has been paid or recovered by distress, or the term of imprisonment imposed in default of payment or of sufficient distress has expired, the clerk shall then enter the sum in the account. Provided that, though the whole of the sum may not have been paid or recovered, the instalments received shall be accounted for at such times and in such manner as the above-mentioned local authority may direct. Rule as to sums of which payment is deferred or to be made by instalments.

8. Where a clerk of a Court of Summary Jurisdiction renders an account in the form required or authorized by these Rules to the authority to whom he is required to render it, he shall not be required to render any other account relating to the same particulars. Provision for dispensing with unnecessary accounts.

9. The clerk of each Court of Summary Jurisdiction shall enter on the day of its receipt each sum of money received by him on any account whatever. Each instalment so received shall be entered in a book called the Instalment Ledger to an account to be opened in respect of the proceeding in which the sum is paid. Entry of receipts by clerk.

10. The book required to be kept by section twelve of the Act 14 & 15 Vict. c. 55, shall be kept according to the form in Part III. of the Schedule hereto, and shall be called the Remitted Fees Book. Remitted fees book.

Crown fines.

11. The clerk of each Court of Summary Jurisdiction shall send on the tenth day of January, April, July, and October in each year to the Secretary of State for the Home Department, Whitehall, without paying the postage, a certified statement, in the form in Part III. of the Schedule hereto, of all fines which have been imposed by the Court during the previous three months, and which are payable wholly or in part to Her Majesty or to the Exchequer. If no such fines have been imposed, the statement shall be certified in blank.

Application of
sum due under
forfeited
security.

12. Where a Court of Summary Jurisdiction has enforced payment of any sum due by a principal in pursuance of a security under the Summary Jurisdiction Act, 1879, which appears to the Court to be forfeited, the sum shall, unless it is recoverable as a civil debt, be paid to the clerk of the Court, and shall be paid and applied by him in the manner in which fines imposed by the Court, in respect of which fines no special appropriation is made, are payable and applicable.

Taking of
recognizances
by Governor
of prison.

13. Where a Court of Summary Jurisdiction has fixed as respects any recognizance the amount in which a principal and a surety or sureties are to be bound, the Governor of a prison shall not be required to take the recognizance of any person proposed as surety, unless the person so proposed produces a certificate in writing from a Court of Summary Jurisdiction, or a clerk thereof, that he has satisfied the Court or clerk of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited.

Form of
security
under Act.

14. Any security given under the Summary Jurisdiction Act, 1879, by an oral or written acknowledgment shall be in the form of an undertaking, and may be in the appropriate form in Part I. or Part II. of the Schedule hereto, or in any other form to the like effect.

Security
book.

15. The clerk of each Court of Summary Jurisdiction shall keep a security book, and shall enter therein with respect to each security given in relation to any proceeding before the Court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken. Where any such security is not entered into before the Court, or before the clerk of the Court, the person before whom it is entered into shall make a return of it, showing the above particulars to the clerk of the Court. The security book, and any certified extract therefrom, shall be evidence of the several matters hereby required to be entered in the security book in like manner as if the security book were the register.

Notice to
principal of

16. Not less than two clear days before a warrant of distress

is issued for a sum due by a principal in pursuance of a forfeited security under the Summary Jurisdiction Act, 1879, the clerk of the Court of Summary Jurisdiction issuing the warrant shall cause notice of the forfeiture to be served on the principal. Service of the notice may be effected either by prepaid letter sent to the address mentioned in the security, or as service of a summons may be effected under the Summary Jurisdiction Acts.

17. An application under section twenty-six of the Summary Jurisdiction Act, 1879, shall be an application for a summons requiring the complainant to show cause why the order made on his complaint should not be varied.

Mode of application to vary order for sureties.

18. An application to a Court of Summary Jurisdiction under section thirty-three of the Summary Jurisdiction Act, 1879, to state a special case shall be made in writing, and a copy left with the clerk of the Court, and may be made at any time within seven clear days from the date of the proceeding to be questioned, and the case shall be stated within three calendar months after the date of the application and after the recognizance shall have been entered into.

Time for stating special case.

19. In the case of a claim for a civil debt recoverable summarily, the particulars of the claim shall, unless embodied in the summons, be annexed to and, if so annexed, shall be deemed part of the summons.

Particulars of claim for civil debt.

20. An order of commitment under section thirty-five of the Summary Jurisdiction Act, 1879, shall not be made unless a summons to appear and be examined on oath (hereinafter called a judgment summons) has been served on the judgment debtor.

Judgment summons.

21. The judgment summons shall, whenever it is practicable, be served personally on the judgment debtor, but if it is made to appear on oath to a Court of Summary Jurisdiction that prompt personal service is for any reason impracticable, the Court may make such order for substituted or other service as the Court may think just.

Service of judgment summons.

22. A judgment summons may issue although no distress warrant has been applied for, and its service, where made out of the jurisdiction of the Court of Summary Jurisdiction issuing the summons, may be proved by affidavit or solemn declaration.

Issue and proof of service of judgment summons.

23. A judgment summons shall be served not less than two clear days before the day on which the judgment debtor is required to appear.

Time of service.

24. The hearing of a judgment summons may be adjourned from time to time.

Adjournment of hearing of judgment summons.

25. Any witness may be summoned to prove the means of

judgment summons.

Witnesses on judgment summons.

Date of order of commitment.

Payment by judgment debtor.

Discharge of judgment debtor.

Costs of plaintiff in enforcing order.

Fee for taking declaration.

Forms.

Annulment of forms and rules.

the judgment debtor, in the same manner as witnesses are summoned to give evidence on the hearing of a complaint.

26. An order of commitment made under section thirty-five of the Summary Jurisdiction Act, 1879, shall, on whatever day it is issued, bear date on the day on which it was made.

27. When an order of commitment for non-payment of money is issued, the defendant may, at any time before he is delivered into the custody of the Governor of a prison, pay to the officer holding the order the amount indorsed thereon as that on the payment of which he may be discharged, and on receiving that amount the officer shall discharge the defendant, and shall forthwith pay over the amount to the clerk of the Court of Summary Jurisdiction which made the order.

28. The sum indorsed on the order of commitment as that on payment of which the prisoner may be discharged may be paid to the clerk of the Court of Summary Jurisdiction from which the commitment order was issued, or to the Governor of the prison in whose custody the prisoner is. Where it is paid to the clerk, he shall sign a certificate of the payment, and upon receiving the certificate by post or otherwise the Governor of the prison in whose custody the prisoner then is shall forthwith discharge the prisoner. Where it is paid to the Governor of the prison, he shall, on payment to him of that amount, with costs sufficient to pay for sending the amount by post office order or otherwise to the Court of Summary Jurisdiction under the order of which the prisoner was committed, sign a certificate of the payment, and discharge the prisoner, and forthwith transmit the sum so received to the clerk of the said Court.

29. All costs incurred by the plaintiff in endeavouring to enforce an order shall, unless the Court shall otherwise order, be deemed to be due in pursuance of the order, as if it were made under section five of the Debtors Act, 1869.

30. The fee for taking a declaration under section forty-one of the Summary Jurisdiction Act, 1879, shall be one shilling.

31. The forms in the Schedule hereto, or forms to the like effect, may be used, with such variations as circumstances may require.

32. The forms in the Schedule to the Summary Jurisdiction Act, 1848, the Summary Jurisdiction Rules, 1880, with the forms in the Schedule thereto, the Summary Jurisdiction Rules of the 24th of August, 1880, and the Summary Jurisdiction Rule of 1881, are hereby annulled.

(Signed)

HERSCHELL, C.

The 16th July, 1886.

THE CROWN OFFICE RULES, 1886.

CERTIORARI.

28. Every application for a writ of certiorari, or for an order to remove an indictment found at the assizes into the Queen's Bench Division, at the instance of any person other than the Attorney-General on behalf of the Crown, shall, during the sittings, be made to a Divisional Court of the said division by motion for an order nisi to show cause, and in the vacation or when there is no sitting of a Divisional Court to a judge at chambers for a summons to show cause ; Provided that where, from special circumstances, the court or a judge may be of opinion that the writ should issue forthwith, the order may be made absolute, or an order be made in the first instance, either *ex parte* or otherwise, as the Court or judge may direct.

33. No writ of certiorari shall be granted, issued, or allowed to remove any judgment, order, conviction, or other proceeding had or made by or before any justice or justices of the peace of any county, city, borough, town corporate, or liberty, or the respective general or quarter sessions thereof, unless such writ of certiorari be applied for within six calendar months next after such judgment, order, conviction, or other proceeding shall be so had or made, and unless it be proved by affidavit that the party suing forth the same has given six days' notice thereof in writing to the justice or justices, or to two of them, if more than one, by and before whom such judgment, order, conviction or other proceedings shall be so had or made, in order that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the granting, issuing, or allowing such writ of certiorari.

34. No special case stated by a court of general or quarter sessions for obtaining the judgment or determination of the High Court upon any order or other determination of a court of general or quarter sessions shall be filed at the Crown Office Department after the expiration of six calendar months from the making of such order or determination, except by leave of the court on special circumstances being shown, either before or after the expiration of such six months.

35. No order for the issuing of a writ of certiorari to remove any order, conviction, or inquisition, or record, or writ of habeas corpus ad subjiciendum shall be granted where the validity of any warrant, commitment, order, conviction, inquisition, or record shall be questioned, unless at the time of moving a copy of any such warrant, commitment, order, conviction, inquisition,

or record, verified by affidavit be produced, and handed to the officer of the Court before the motion be made, or the absence thereof accounted for to the satisfaction of the Court.

36. No writ of certiorari shall be allowed to remove any judgment, order, or conviction given or made by justices, unless the party (other than the Attorney-General acting on behalf of the Crown) prosecuting such certiorari, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the county or place or at their general or quarter sessions, where such judgment or order shall have been given or made, or before any judge of the High Court in the sum of 50*l.*, with condition to prosecute the same at his own costs and charges with effect, without any wilful or affected delay, and to pay the party in whose favour or for whose benefit such judgment, order, or conviction shall have been given or made, within one month after the said judgment, order, or conviction shall be confirmed, his full costs and charges, to be taxed according to the course of the court where such judgment, order, or conviction shall be confirmed, and in case the party prosecuting such certiorari, shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall be lawful for the said justices to proceed and make such further order for the benefit of the party for whom such judgment shall be given, in such manner as if no certiorari had been granted.

37. When cause is shown against an order nisi for a certiorari to remove any judgment order or conviction upon which no special case has been stated given or made by justices of the peace for the purpose of quashing such judgment order or conviction, the Divisional Court, if it shall think fit, may make it a part of the order absolute for the certiorari that the judgment, order, or conviction shall be quashed on return without further order, and in such case no such recognizance as is required by Rule 36 shall be necessary, and a memorandum to that effect shall be endorsed by the proper officer upon the issuing of the writ of certiorari.

38. No special case stated upon any order, or other determination of a court of general or quarter sessions shall be filed at the Crown Office Department, unless the party proceeding upon such special case shall enter into a recognizance as provided by Rule 36, and in default thereof the justices may proceed as in that rule provided.

39. In all civil causes or matters, which shall have been removed by certiorari, or in respect of which a special case shall have been stated, the recognizance shall be conditioned as regards costs to pay such costs, if any, as the Court shall order.

40. No objection on account of any omission or mistake in any judgment or order of any justice of the peace, court of summary jurisdiction, or court of general or quarter sessions, brought up upon a return to a writ of certiorari and filed at the Crown Office Department, shall be allowed, unless such omission or mistake shall have been specified in the order for issuing such certiorari.

INFORMATIONS.

46. With the exception of ex-officio informations filed by the Attorney-General on behalf of the Crown no criminal information or information in the nature of a quo warranto shall be exhibited, received, or filed at the Crown Office Department without express order of the Queen's Bench Division in open court, nor shall any process be issued upon any information other than an ex-officio information, until the person procuring such information to be exhibited shall have filed at the Crown Office Department a recognizance in the penalty of 50*l.* effectually to prosecute such information and to abide by and observe such orders as the Court shall direct, such recognizance to be entered into before the Queen's coroner and attorney or the master of the Crown Office, or a justice of the peace of the county, borough, or place in which the cause may have arisen.

47. No application shall be made for a criminal information against a justice of the peace for misconduct in his magisterial capacity unless a notice containing a distinct statement of the grievances, or acts of misconduct complained of, be served personally upon him, or left at his residence, with some member of his household, six days before the time named in it for making the application.

48. The application for a criminal information shall be made to a Divisional Court by a motion for an order nisi, within a reasonable time after the offence complained of, and if the application be made against a justice of the peace for misconduct in his magisterial capacity, the applicant must depose on affidavit to his belief that the defendant was actuated by corrupt motives, and further, if for an unjust conviction, that the defendant is innocent of the charge.

49. If the prosecutor on any information not ex-officio does not proceed to trial within a year after issue joined, or if the prosecutor causes a nolle prosequi to be entered, or if the defendant be acquitted (unless the judge at the time of trial certifies that there was reasonable cause for the information), the Court, on motion for the same, may award the defendant his costs to the amount of the recognizance entered into by the prosecutor on filing the information.

MANDAMUS.

60. Application for a prerogative writ of mandamus shall, during the sittings, be made to a Divisional Court of the Queen's Bench Division by motion for an order nisi; and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent. Provided that this Rule shall not apply to any application for a writ of mandamus under 45 & 46 Vict. c. 50, s. 225.

61. Notice shall be given by the order nisi for a mandamus to every person who by the affidavits on which the order is moved shall appear to be interested in or likely to be affected by the proceedings, and to any person who in the opinion of the Court or judge ought to have such notice.

62. The order nisi shall be served upon each person to whom notice is given by the order, as well as the party whom the order requires to show cause.

63. Any person, whether he has had notice or not, who can make it appear to the Court or judge that he is affected by the proceeding for a writ of mandamus may show cause against the order nisi or summons, and shall be liable to costs in the discretion of the Court or a judge if the order should be made absolute, or the prosecutor obtain judgment.

64. The order absolute for a mandamus need not be served, but the cost of service of the order absolute may be allowed in the discretion of the taxing officer, where the writ is not issued.

65. If the writ of mandamus is directed to one person only the original must be personally served upon such person, but if the writ be directed to more than one, the original shall be shown to each one at the time of service, and a copy served on all but one, and the original delivered to such one.

66. When a writ of mandamus is directed to companies, corporations, justices, or public bodies, service shall be made upon such and so many persons as are competent to do the act required to be done, the original being delivered to one of such persons, except where by statute service on the clerk or some other officer is made sufficient service.

67. The Court or a judge may, if they or he shall think fit, order that any writ of mandamus shall be peremptory in the first instance.

68. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall

be in the Form in the Appendix No. 37 (a), with such variations as circumstances may require.

69. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

70. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required.

71. Where under Rules 70 and 136 the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

72. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any judge thereof.

73. When it appears to the Court that the respondent claims no right or interest in the subject matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment shall still be made and proceed in the name of the person to whom the writ is directed, and if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made: and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

74. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

76. No order for the issuing of any writ of mandamus shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as prosecutor, and if the writ be granted

the name of such person shall be endorsed on the writ as the person at whose instance it is granted.

77. Every application for the costs of a mandamus shall, unless the Court or a judge shall otherwise order, be made before the fifth day of the sittings next after that in which the right to make such application accrued, and shall be upon notice of motion to be served eight days before the day named therein for moving.

78. The party moving for costs shall leave at the Crown Office Department a notice for the production in Court of all the affidavits filed in support of, and in opposition to, the original order.

79. Every application for a writ of mandamus to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the sessions at which the refusal to hear took place, unless further time be allowed by the Court or a judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the Court.

ORDERS IN THE NATURE OF MANDAMUS.

80. An application for an order in the nature of a mandamus, to justices, or to a county court judge, or to justices to state and sign a case, shall be by motion for an order nisi (in the same manner as is provided in Rule 60).

PROHIBITION.

81. An application for a writ of prohibition on the Crown side shall be made by motion to a Divisional Court for an order nisi in all criminal causes or matters; and in civil proceedings on the Crown side by motion for an order nisi or by summons before a judge at chambers.

82. The order may be made absolute *ex parte* in the first instance on special circumstances being shown, in the discretion of the Court or judge.

HABEAS CORPUS.

A.—*Ad subjiciendum.*

235. An application for a writ of habeas corpus *ad subjiciendum* may be made to the Court or a judge.

236. If made to the Court the application shall be by motion for an order, which if the Court so direct may be made absolute *ex parte* for the writ to issue in the first instance; or if the Court so direct they may grant an order nisi.

237. If made to a judge he may order the writ to issue *ex parte* in the first instance or may direct a summons for the writ to issue.

238. Provided that no application for a writ of habeas corpus on a warrant of extradition shall be made to a judge at chambers, during the sittings.

239. The writ of habeas corpus shall be served personally, if possible, upon the party to whom it is directed; or if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with a servant or agent of the person confining or restraining, at the place where the prisoner is confined or restrained, and if the writ be directed to more than one person, the original delivered to or left with such principal person, and copies served or left on each of the other persons in the same manner as the writ.

240. If a writ of habeas corpus be disobeyed by the person to whom it is directed, application may be made to the Court on an affidavit of service and disobedience for an attachment for contempt. In vacation an application may be made to a judge in chambers, for a warrant for the apprehension of the person in contempt to be brought before him, or some other judge, to be bound over to appear in Court at the next ensuing sittings, to answer for his contempt, or to be committed to the Queen's prison for want of bail.

241. The return to the writ of habeas corpus shall contain a copy of all the causes of the prisoner's detainer endorsed on the writ, or on a separate schedule annexed to it.

242. The return may be amended or another substituted for it by leave of the Court or a judge.

243. When a return to the writ of habeas corpus is made, the return shall first be read, and motion then made for discharging or remanding the prisoner, or amending or quashing the return.

244. On the argument of an order nisi for a writ of habeas corpus the Court may in its discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant to any gaoler or constable or other person for his discharge.

245. Upon the argument before the Court on the return of a writ of habeas corpus the party in whose favour judgment is given shall forthwith draw up an order in accordance with the decision of the Court at the Crown Office, and the writ, and return, and affidavits, shall be filed there. When the order has been made by a judge at chambers, the writ, and return, with the affidavits and a copy of the judge's order, shall be forthwith transmitted to the Crown Office to be filed.

THE SUMMARY JURISDICTION RULE, 1891.



The forms in the schedule hereto (b), or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Reformatory Schools Act, 1866, the Industrial Schools Act, 1866, the Industrial Schools Act Amendment Act, 1880, and the Elementary Education Act, 1876, and this rule may be cited as the Summary Jurisdiction Rule, 1891.

(b) *Post*, p. 589.

III. FORMS.

I. APPEAL (a).

1. *General Form of Notice of Appeal against a Conviction.*

to wit. { To of in the said county.
notice that I, , do intend at the next general quarter sessions [or, "quarter sessions"] of the peace to be holden in and for the said county of , at , in the said county, to appeal against a certain conviction of me the said , by , esquire, one of her majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, on , &c., at , &c. [stating the offence], and that the cause and grounds of such appeal are that I am not guilty of the said offence, and that, &c. [stating any other cause of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice. Dated this day of, &c.

Witness, D. C.

A. B.

3. *Judgment of Affirmance of the Sessions on an Appeal against a Conviction (b).*

to wit. { At a general quarter sessions of the peace of our sovereign lady the queen, held by proclamation at , in and for the county of , on the day of , in the year of the reign of our sovereign lady the now Queen Victoria, and in the year of our Lord 18 , before A. B., C. D., E. F. and others their fellows, the justices of our said lady the queen, assigned to keep the peace of our said lady the queen within the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors done and committed within the said county, and

(a) *Ante*, p. 282.

(b) It must appear by the order of session that they had jurisdiction

over the subject-matter of it; *R. v. Spackman*, 1 Gale & D. 619.

one of whom is of the quorum : and afterwards by adjournment (to wit), at _____, in and for the said county, on _____, in the _____ year of the reign aforesaid, before G. H., I. K., L. M. and others their fellows, also the justices of our said lady the queen, assigned to keep the peace of our said lady the queen within the county aforesaid, and also to hear and determine as aforesaid in the said county, and one of whom is also of the quorum.

At the same court, so held at _____, on the day and year aforesaid, J. W., of _____, in the county of _____ aforesaid, farmer, entered his appeal to and against a conviction under the hand and seal of C. D., esquire, one of her majesty's justices of the peace for the county aforesaid, dated and made the _____ day of _____, 18 [here state the offence as in the conviction], and by which said conviction he the said C. D. did adjudge that the said J. W. should for the said offence forfeit the sum of two pounds, together with the sum of seventeen shillings for costs, and did order that the said sums should be paid by the said J. W., on or before the _____ day of _____ last, and that in default of payment on or before that day he the said C. D. did, by the said conviction, adjudge the said J. W. to be imprisoned and kept to hard labour in the house of correction at _____, in the county aforesaid, for the space of two calendar months, unless the said sums should be sooner paid ; and that the said C. D. did, in and by the said conviction, direct that the said sum of two pounds should be paid to P. S., being one of the overseers of the poor of the said parish of _____, to be by him applied according to the directions of the statute in such case made and provided ; and that the sum of seventeen shillings for costs should be paid to the said _____ the informant, on whose information the said complaint was founded. [*Let this agree with the conviction.*]

Now therefore at the said court so holden as aforesaid by adjournment at _____ as aforesaid, upon hearing of the said appeal, it is now here ordered and adjudged by the said court that the said conviction be, and the same is hereby in all things affirmed ; and it is also now here by the same court further ordered and adjudged that the said J. W. be dealt with and punished according to the said conviction, and also that he the said J. W. do and shall pay to the said _____, the said informant, and the respondent in the said appeal, the sum of _____, the amount of the costs sustained by the said _____, and by him incurred by reason of the said appeal, and now by the said court here adjudged to be paid to him by the said J. W., according to the statute in such case made and provided.

II. SCHEDULE OF FORMS TO SUMMARY JURISDICTION RULES, 1886.

PART I.

FORMS IN SUMMARY PROCEEDINGS OTHER THAN FOR CIVIL DEBTS.

1. Information or complaint.
2. Summons to defendant.
3. Summons for forfeiture of recognisance.
4. Summons to vary sureties, &c.
5. Summons to witness.
6. Warrant for apprehension of defendant.
7. Warrant for apprehension of a witness.
8. Warrant for apprehension of witness in first instance.
9. Commitment of witness.
10. Commitment on remand, &c.
11. Conviction for penalty, &c.
12. Conviction (imprisonment).
13. Conviction (forfeited recognisance).
14. Conviction of child for indictable offence.
15. Conviction (by consent) for indictable offence.
16. Conviction (on plea of guilty) for indictable offence.
17. Conviction (with security).
18. Order for money (not a civil debt).
19. Order for other matters.
20. Order of recognisance to keep the peace, &c.
21. Order of dismissal.
22. Order of dismissal with damages.
23. Certificate of dismissal.
24. Warrant of distress (for penalty, &c.)
25. Warrant of distress on an order for money (not a civil debt), or costs, &c.
26. Warrant of distress for sum due under recognisance.
27. Return of insufficient distress to be indorsed on warrant.
28. Account of charges incurred on a warrant of distress.
29. Commitment in lieu of distress.
30. Commitment pending return to warrant of distress.
31. Commitment in default of distress.
32. Commitment for a penalty without distress.
33. Commitment on sentence of imprisonment only.
34. Commitment on an order in the first instance.
35. Endorsement on process.
36. Recognisance.
37. Endorsement of forfeiture of recognisance.
38. Endorsement mitigating forfeiture, &c.
39. Notice of recognisance to be given to the defendant and his sureties.
40. Security for penalty, &c.
41. Security to perform condition of forfeited recognisance.
42. Notice to principal of forfeiture of security.
43. Order varying order for sureties.
44. Order to bring up prisoner for bail.

- 45. Notice to parent or guardian of child charged with an indictable offence.
- 46. Declaration of service.
- 47. Declaration as to handwriting and seal.
- 48. Certificate of costs of prosecution of indictable offence dealt with summarily.
- 49. Certificate of clerk of the peace that the costs of an appeal have not been paid.

PART II.

FORMS APPLICABLE TO PROCEEDINGS FOR THE RECOVERY OF
A CIVIL DEBT.

- 1. Complaint.
- 2. Summons to appear.
- 3. Summons to witness.
- 4. Judgment.
- 5. Judgment summons.
- 6. Order of commitment.
- 7. Certificate for discharge from custody.
- 8. Distress warrant.
- 9. Undertaking to pay civil debt.

PART III.

GENERAL FORMS.

- 1. Register.
- 2. Account of fines and fees.
- 3. Remitted fee book.
- 4. Return of exchequer fines, penalties, &c.

TABLE SHOWING THE CORRESPONDENCE BETWEEN THE FORMS SCHEDULED
TO 11 & 12 VICT. C. 43, AND THE CONSOLIDATED FORMS.

| Schedule to 11 & 12 Vict. c. 43. | Consolidated Forms. | Schedule to 11 & 12 Vict. c. 43. | Consolidated Forms. |
|-------------------------------------|------------------------|-------------------------------------|------------------------|
| A . . . | 2. | L . . . | 21. |
| B . . . | 6. | M . . . | 23. |
| C . . . | 6. | N 1 . . . | 24. |
| D . . . | 10. | N 2 . . . | 25. |
| E . . . | 36. | N 3 . . . | 35. |
| F . . . | 37. | N 4 . . . | 27. |
| G 1 . . . | 5. | N 5 . . . | 31. |
| G 2 . . . | 7. | O 1 . . . | 32. |
| G 3 . . . | 8. | O 2 . . . | 34. |
| G 4 . . . | 9. | P 1 . . . | 33. |
| H . . . | 10. | P 2 . . . | 32. |
| I 1 . . . | 11. | P 3 . . . | 24. |
| I 2 . . . | 11. | P 4 . . . | 25. |
| I 3 . . . | 12. | P 5 . . . | 31. |
| K 1 . . . | 18. | Q 1 . . . | 25. |
| K 2 . . . | 18. | Q 2 . . . | 31. |
| K 3 . . . | 19. | R . . . | 49. |

PART I.

FORMS IN SUMMARY PROCEEDINGS OTHER THAN FOR CIVIL DEBTS.

1. *Information or Complaint.*

In the [county of . *Petty Sessional Division of*].
 The day of one thousand hundred and .
 The information [or complaint] of C.D. of (*address and de-*
scription), who upon oath [or affirmation] states that A.B. of
 (*address and description*) on the day of , at
 , in the aforesaid, did .
 Taken before me,

J.P.,
 Justice of the Peace for the [county] aforesaid.

2. *Summons to Defendant.*

In the [county of . *Petty Sessional Division of*].
 To A.B. of .
 Information on oath [or affirmation] has been laid [or com-
 plaint has been made] this day by for that you on the
 day of at in the aforesaid,
 did .

You are therefore hereby summoned to appear before the
 Court of Summary Jurisdiction sitting at on
 day the day of , at the hour of in the
 noon, to answer to the said information [or complaint].

Dated the day of one thousand hundred
 and .

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

3. *Summons for Forfeiture of Recognisance.*

In the [county of . *Petty Sessional Division of*].
 To A.B. of .
 You are hereby summoned to appear before the Court of

Summary Jurisdiction sitting at on day the
 day of , at the hour of in the
 noon, to show cause why the recognisance entered into the
 day of whereby you are bound to pay the
 sum of should not be adjudged to be forfeited.
 Dated the day of one thousand hundred
 and .

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

4. *Summons to Vary Sureties, &c.*

In the [county of . Petty Sessional Division of].
 To A.B. of .

You are hereby summoned to appear before the Court of
 Summary Jurisdiction sitting at on day the
 day of , at the hour of in the
 noon, to show cause why the order made by the Court of Sum-
 mary Jurisdiction aforesaid [or sitting at], on the
 day of , against to find suret should not
 be varied or otherwise dealt with.

Dated the day of one thousand hundred
 and .

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

5. *Summons to Witness.*

In the [county of . Petty Sessional Division of].
 To E.F.

A.B. has been charged by for that he on the
 day of , at in the aforesaid, did :

And it appearing to me by the oath [or affirmation] of
 that you are likely to give material evidence therein on behalf
 of the informant [or complainant or defendant], and will not
 voluntarily appear for that purpose.

You are therefore hereby summoned to appear before the
 Court of Summary Jurisdiction sitting at , on
 day the day of , at the hour of in the
 noon, to testify what you know in such matter.

Dated the day of one thousand hundred
 and .

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

6. *Warrant for Apprehension of Defendant.*

In the [county of . Petty Sessional Division of].
 To each and all of the constables of .
 Information on oath [or affirmation] has been laid [or complaint has been made] this day [or on the day of
] by that A.D. herein-after called the defendant on the day of at in the
 aforesaid, did

[Where the defendant has been summoned, and has not appeared, add: And the defendant was thereupon summoned to
 appear before the Court of Summary Jurisdiction sitting at
 on day the day of at the
 hour of in the noon, to answer to the said
 charge :

An oath [or affirmation, or declaration] has been made that
 the defendant was duly served with the summons, but did not
 appear, and that such information [or complaint] is true.

You are therefore hereby commanded to bring the defendant
 before the Court of Summary Jurisdiction sitting at
 forthwith [or on the day of , at the
 hour of in the noon], to answer to the said
 information [or complaint].

Dated the day of one thousand hundred
 and .

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

7. *Warrant for Apprehension of a Witness.*

In the [county of . Petty Sessional Division of].
 To each and all of the constables of .
 E.F. was duly summoned to appear before the Court of
 Summary Jurisdiction sitting at on day the
 day of , at the hour of in the
 noon, to testify what he should know concerning a certain
 information [or complaint] against A.B. :

And he has neither appeared thereto, nor offered any just
 excuse for his neglect :

And it has been proved on oath [or affirmation] that the
 summons has been duly [indorsed and] served on him, and that
 a reasonable sum has been paid [or tendered] to him for his costs
 and expenses in that behalf,

You are therefore hereby commanded to bring him before the Court of Summary Jurisdiction sitting at _____ forthwith
 or on _____ the _____ day of _____, at the hour
 of _____ in the _____ noon], to testify what he knows
 concerning the said matter.

Dated the _____ day of _____ one thousand _____ hundred
 and _____

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

8. *Warrant for Apprehension of Witness in First Instance.*

In the [county of _____ . Petty Sessional Division of _____]
 To each and all of the constables of the _____ of _____
 A.B. has been charged by _____ for that he on the
 day of _____ at _____ in the _____ aforesaid, did _____.

And it appearing to me by the oath [or affirmation] of
 that E.F. is likely to give material evidence concern-
 ing the said matter, and that it is probable he will not attend
 to give evidence unless compelled so to do :

You are therefore hereby commanded to bring him before
 the Court of Summary Jurisdiction sitting at _____ forth-
 with [or on _____ the _____ day of _____ at the hour of
 _____ in the _____ noon], to testify what he knows con-
 cerning the said matter.

Dated the _____ day of _____ one thousand _____ hundred
 and _____

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

9. *Commitment of Witness.*

In the [county of _____ . Petty Sessional Division of _____]
 To each and all of the constables of _____, and to the
 Governor of Her Majesty's prison at _____.

E.F., having appeared or being brought before the Court of
 Summary Jurisdiction sitting at _____ on _____ day the
 day of _____, to testify what he should know con-
 cerning a certain matter against A.B., refused to take an oath
 [or affirmation] [or having taken an oath or affirmation] refused

to answer any [or a certain] question put to him concerning the premises, and did not offer any just excuse for his refusal :

You the said constables are therefore hereby commanded to convey the said E.F. safely to the said prison, and there deliver him to the Governor thereof, together with this warrant, and you, the Governor of the said prison, to receive him into your custody, and keep him for the space of _____, unless he in the meantime consents to be examined and answer concerning the premises.

Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

10. Commitment on Remand, &c.

In the [county of . Petty Sessional Division of].

To each and all of the constables of _____, and to the
Governor of Her Majesty's prison at _____.

A.B., hereinafter called the defendant, being brought before the Court of Summary Jurisdiction sitting at _____, charged with having

The hearing of the case being adjourned :

You the said constables are therefore hereby commanded to convey the defendant to the said prison, and there to deliver him to the Governor thereof, together with this warrant, and you, the Governor of the said prison to receive him into your custody, and keep him until the day of 18 , and on that day to convey him before the Court of Summary Jurisdiction sitting at at the hour of in the noon, to be further dealt with according to law.

Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

Indorsement where Bail is allowed.

I hereby certify that I consent to the defendant being bailed,
himself in pounds and sureties in
pounds each.

11. *Conviction for Penalty, &c.*

In the [county of . Petty Sessional Division of].
 Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred
 and .

A.B., hereinafter called the defendant, is this day convicted
 for that he, on the day of , at within
 the aforesaid did .

And it is adjudged that the defendant for his said offence
 do forfeit and pay the sum of and do also pay the further
 sum of for compensation and for costs [by instal-
 ments of for every days, the first instalment to be
 paid] forthwith [or on the day of] :

And in default of payment it is adjudged that [the sums due
 under this adjudication be levied by distress and sale of the
 defendant's goods, and in default of sufficient distress that] the
 defendant be imprisoned in Her Majesty's prison at and
 there kept [to hard labour] for the space of unless the
 said sums [and all costs and charges of the [said distress and]
 commitment and of his conveyance to the said prison] be sooner
 paid.

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

Indorsement where Security for Payment is permitted.

It is ordered that the defendant be at liberty to give to the
 satisfaction of [this Court] security in the sum of with
 suret in the sum of [each] for the due
 payment of the said sums as adjudged.

Note.—It may be convenient in practice to have separate
 forms printed off for the different forms of adjudication.

12. *Conviction (Imprisonment).*

In the [county of . Petty Sessional Division of].
 Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred
 and .

A.B., hereinafter called the defendant, is this day convicted
 for that he, on the day of , at , within
 the aforesaid, did .

And it is adjudged that the defendant, for his said offence, be

imprisoned in Her Majesty's prison at and there kept [to
hard labour] for the space of .

[If costs are ordered, add:]

And it is ordered that the defendant pay to the sum
of for costs [by instalments of for every days,
the first instalment to be paid] forthwith [or on the day
of]:

And in default of payment it is ordered that the sum due be
levied by distress and sale of the defendant's goods, and in
default of sufficient distress that the defendant be imprisoned
in the said prison for the space of commencing at the
termination of the imprisonment before adjudged, unless the said
sum [and all costs and charges of the [said distress and] commit-
ment, and of his conveyance to the said prison] be sooner paid.

J.P., (L.S.)

Justice of the Peace for the [county] aforesaid.

13. Conviction (Forfeited Recognizance).

In the [county of . Petty Sessional Division of].
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred
and .

A.B., herein-after called the defendant, was by his recog-
nizance entered into the day of , bound in the sum
of , and his sureties C.D. and E.F. in the sum of
each, the condition of the recognizance being that the said
defendant should :

And it being now proved that the defendant was on the
day of , convicted of the offence of having , the
same being a breach of the said condition:

It is therefore adjudged that the said recognizance be for-
feited, and that the said pay to the sum of ,
and the further sum of for costs [by instalments of
for every days, the first instalment to be paid] forthwith
on the day of]:

And in default of payment it is ordered that the sum due
from the said under this adjudication be levied by distress
and sale of his goods, and in default of sufficient distress that
he be imprisoned in Her Majesty's prison at for the space
of unless the said sums [and all costs and charges of the
[said distress and] commitment, and of his conveyance to the
said prison] be sooner paid.

J.P., (L.S.)

Justice of the Peace for the [county] aforesaid.

14. *Conviction of Child for Indictable Offence.*

In the [county of . Petty Sessional Division of]
 Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred and .
 A.B., hereinafter called the defendant, being a child within
 the meaning of the Summary Jurisdiction Act, 1879, and above
 the age of seven years, is this day convicted, without objection
 of the parent or guardian, for that he on the day of ,
 at , in the aforesaid, did :

And it is adjudged that [*proceed as in other forms of conviction ; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—*

And that the defendant, being a male child, be, as soon as practicable, privately whipped with strokes of a birch rod.]

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

15. *Conviction (by consent) for Indictable Offence.*

In the [county of . Petty Sessional Division of]
 Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred and .
 A.B., hereinafter called the defendant, being an adult [or a young person] within the meaning of the Summary Jurisdiction Act, 1879, is this day charged for that he on the day of
 at in the aforesaid, did :

The defendant, having consented to be dealt with summarily, is convicted of the said offence :

And it is adjudged that [*proceed as in other forms of conviction ; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—*

And that the defendant, being a male under the age of 14 years, be, as soon as practicable, privately whipped with strokes of a birch rod.]

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

16. *Conviction (on Plea of Guilty) for Indictable Offence.*

In the [county of . Petty Sessional Division of]
 Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred and .
 A.B., hereinafter called the defendant, is this day charged
 for that he on the day of , at in the
 aforesaid, did :

And the defendant having pleaded guilty to the charge, is
 convicted of the offence, and is adjudged to be imprisoned in
 Her Majesty's prison at and there kept [*to hard labour*]
 for the space of .

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the sum
 of for costs [by instalments of for every days,
 the first instalment to be paid] forthwith [*or on the day*
of]:

And in default of payment it is ordered that the sum due be
 levied by distress and sale of the defendant's goods, and in
 default of sufficient distress that the defendant be imprisoned
 in the said prison for the space of commencing at the
 termination of the imprisonment before adjudged, unless the
 said sum [and all costs and charges of the [said distress and]
 commitment, and of his conveyance to the said prison] be
 sooner paid.]

J.P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

17. Conviction (with Security).

In the [county of . Petty Sessional Division of].
 Before the Court of Summary Jurisdiction sitting at .
 The day of one thousand hundred and .
 A.B., hereinafter called the defendant, is this day convicted
 for that he on the day of , at in the
 aforesaid, did :

But the Court being of opinion that the said offence was of
 so trifling a nature that it is inexpedient to inflict any [*or any*
other than a nominal] punishment, and the defendant having
 given security to the satisfaction of this Court to appear for
 sentence when called upon [*or to be of good behaviour*], he is
 discharged :

[*If costs are ordered, add:—*

And it is ordered that the defendant pay to the said
 the sum of for costs [by instalments of for every
 days, the first instalment to be paid] forthwith [*or on*
the day of]:

And in default of payment it is ordered that the sum due be

levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in Her Majesty's prison at for the space of unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

18. *Order for Money (not a Civil Debt.)*

In the [county of . *Petty Sessional Division of*].
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred and .
A.B. having made a complaint that C.D., hereinafter called
the defendant, on the day of , at within
the aforesaid, did :

On hearing the said complaint, it is ordered that the defendant pay to the said the sum of , and also the sum of for costs, [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that [the said sums be levied by distress and sale of the defendant's goods, and in default of sufficient distress that] the defendant be imprisoned in Her Majesty's prison at and there kept [*to hard labour*] for the space of , unless the said sums [and all costs and charges of the [said distress and] commitment and of his conveyance to the said prison] be sooner paid.

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

19. *Order for other Matters.*

In the [county of . *Petty Sessional Division of*].
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred and .
A.B. having made a complaint that C. D., hereinafter called
the defendant, on the day of at in the
 aforesaid, did :

On hearing the said complaint, it is ordered that the defendant do :

[If imprisonment is ordered, add:—

And it is adjudged that if the defendant neglect or refuse to obey this order, he be imprisoned in Her Majesty's prison at for the space of [or unless the said order be sooner obeyed].

[If costs are ordered, add:

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before adjudged, unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

20. *Order of Recognizance to keep the Peace, &c.*

In the [county of . Petty Sessional Division of].

Before the Court of Summary Jurisdiction sitting at .

The day of one thousand hundred and .

A.B., having made a complaint that C.D., hereinafter called the defendant, on the day of at , in the aforesaid, did :

It is adjudged that the defendant do forthwith to the satisfaction of enter into a recognizance in the sum of with suret in the sum of [each] to keep the peace and be of good behaviour towards Her Majesty and all her liege people, and especially towards the complainant, for the term of now next ensuing :

And it is adjudged that if the defendant fail to comply with this order he be imprisoned in Her Majesty's prison at for the space of unless he sooner complies with this order.

[If costs are ordered, add:—

And it is ordered that the defendant pay to the said the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of]:

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in the said prison for the space of commencing at the termination of the imprisonment before ordered, unless the said sum [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

21. *Order of Dismissal.*

In the [county of . *Petty Sessional Division of*].
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred and .
Information [or Complaint] having been laid [or made] by
 that A.B., hereinafter called the defendant, on the
 day of at in the aforesaid,
did :

This Court having heard and determined the said information [or complaint] doth hereby dismiss the same :

[If costs are ordered, add:

And it is ordered that the informant pay to the defendant the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of] :

And in default of payment it is ordered that the sums due be levied by distress and sale of the informant's [or complainant's] goods, and in default of sufficient distress that the informant [or complainant] be imprisoned in Her Majesty's prison at for the space of , unless the said sums [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.]

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

22. *Order of Dismissal with Damages.*

In the [county of . *Petty Sessional Division of*].
Before the Court of Summary Jurisdiction sitting at .
The day of one thousand hundred and .
Information having been laid by A.B. that C.D., hereinafter

called the defendant, on the day of at in the
aforesaid, did :

And the Court being of opinion that though the said charge is proved the offence is of so trifling a nature that it is inexpedient to inflict any punishment, doth hereby dismiss the said information ;

But doth order that the defendant do pay the informant
for damages and for costs [by instalments of
for every days, the first instalment to be paid]
forthwith [or on the day of] :

And in default of payment it is ordered that the said sums be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be imprisoned in Her Majesty's prison at for the space of unless the said sums [and all costs and charges of the [said distress and] commitment, and of his conveyance to the said prison] be sooner paid.

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

23. *Certificate of Dismissal.*

In the [county of . Petty Sessional Division of].
I [or We] hereby certify that a charge made against
for that he on the day of at in the
aforesaid, did was this day heard and determined by the
Court of Summary Jurisdiction sitting at and dismissed.
Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

24. *Warrant of Distress (for Penalty, &c.).*

In the [county of . Petty Sessional Division of].
To each and all of the constables of .
A.B., hereinafter called the defendant, was on the day
of convicted before the Court of Summary Jurisdiction
sitting at for that he on the day of at
in the aforesaid, did :
And it was adjudged that the defendant for the said offence
should be imprisoned [or forfeit and pay the sum of],

and should also pay the sum of [for compensation and] for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of], and that in default the said sum [or sums] should be levied by distress,

And default having been made in payment :

You are hereby commanded to forthwith make distress of the goods of the defendant (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade); and if within the space of [five] clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that court, and if no such distress can be found, to certify the same to that court.

Dated the day of one thousand hundred and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

| | £ | s. | d. |
|---|---|----|----|
| Amount adjudged | | | |
| Paid | | | |
| Remaining due | | | |
| Costs of issuing this warrant | | | |
| Total amount to be levied | | | |

25. *Warrant of Distress on an Order for Money (not a Civil Debt), or for Costs, &c.*

In the [county of . Petty Sessional Division of .]
To each and all of the constables of .
Between , Complainant, and , Defendant.
On the day of it was ordered by the Court of Summary Jurisdiction sitting at that the should pay to the [the sum of for , and] the sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [or on the day of], and that in default the said sums should be levied by distress :

And default having been made in payment :

You are hereby commanded to forthwith make distress of the goods of the defendant [*or complainant*] (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade); and if within the space of [*five*] clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that court, and if no such distress can be found, to certify the same to that court.

Dated the day of one thousand hundred and .

J.P., (L.S.)
Justice of the Peace for the [*county*] aforesaid.

| | £ | s. | d. |
|---|---|----|----|
| Amount adjudged | | | |
| Paid | | | |
| Remaining due | | | |
| Costs of issuing this warrant | | | |
| Total amount to be levied | | | |

26. *Warrant of Distress for Sum due under Recognizance.*

In the [*county of* . *Petty Sessional Division of*].
To each and all of the constables of .
A.B., was by his recognizance entered into the day of bound in the sum of .

And the condition of the said recognizance having been broken, it was on the day of adjudged by the Court of Summary Jurisdiction sitting at that the said recognizance be forfeited, and that he do pay the said sum of , and also do pay the further sum of for costs [by instalments of for every days, the first instalment to be paid] forthwith [*or on the* day of]:

And default having been made in payment :

You are hereby commanded to forthwith make distress of the goods of the said (except the wearing apparel and

of the costs and charges incurred in respect of the execution of the said warrant :—

Dated the day of one thousand hundred
and .

£ s. d.

Total .

A.B.

29. Commitment in lieu of Distress.

In the [county of . Petty Sessional Division of].

To each and all of the constables of and to the
Governor of Her Majesty's prison at .

A.B., hereinafter called the defendant, was this day [or on
the day of], before the Court of Summary Juris-
diction sitting at convicted [or ordered] [reciting con-
viction or order] :

And default having been made in payment :

And it appearing to this court that the defendant has no
[sufficient] goods whereon to levy distress [or that the levy of
the distress will be more injurious to the defendant and his
family than imprisonment] :

It is ordered that the defendant be imprisoned in Her
Majesty's prison aforesaid and there kept [to hard labour] for
the space of , unless the said sum [and all costs and
charges of his commitment and of his conveyance to the said
prison] be sooner paid :

And you the said constables are hereby commanded to take
the defendant, and convey him to the said prison, and there
deliver him to the Governor thereof, together with this warrant ;
and you the Governor of the said prison to receive the defendant
into your custody, and keep him [to hard labour] for the space
of , unless the said sum [and all costs and charges of his
commitment and of his conveyance to the said prison] be
sooner paid.

Dated the day of one thousand hundred
and .

J.P., (L.S.)

Justice of the Peace for the [county] aforesaid.

30. *Commitment pending Return to Warrant of Distress.*

In the [county of . Petty Sessional Division of].
To each and all of the constables of , and to the
Governor of Her Majesty's prison at .

A.B., hereinafter called the defendant, was this day [or on
the day of] before the Court of Summary Jurisdiction
sitting at convicted [or ordered] [reciting conviction or
order]:

And default having been made in payment, a warrant of
distress was issued, but no return has been made thereto:

And the defendant not having given sufficient security to the
satisfaction of this court for his appearance at the time and
place appointed for the return of the warrant of distress:

You the said constables are hereby commanded to convey
the defendant to the said prison, and there deliver him to the
Governor thereof, together with this warrant; and you the
Governor of the said prison to receive the defendant into your
custody, and keep him until the day of , and on
that day to convey him before the Court of Summary Jurisdic-
tion aforesaid [or sitting at] at the hour of in
the noon [unless he previously enters into a recognizance
in the sum of with suret in the sum
of [each] conditioned for his appearance on that day, or
pays the sum of being the amount payable under such
warrant].

Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

31. *Commitment in Default of Distress.*

In the [county of . Petty Sessional Division of].
To each and all of the constables of , and to the
Governor of Her Majesty's prison at .

A.B., hereinafter called the , was this day [or on
the day of] before the Court of Summary Jurisdic-
tion sitting at convicted [or ordered] [reciting conviction
or order]:

And default having been made in payment, the constables
aforesaid were authorised by warrant dated the day
, to levy the sum of . by distress:

And it now appearing that no sufficient distress whereon to levy the said sum could be found [and that a balance of is due under such adjudication or order]:

You the said constables are hereby commanded to convey the defendant [*or complainant*] to the said prison, and there deliver him to the Governor thereof, together with this warrant; and you the Governor of the said prison to receive the defendant [*or complainant*] into your custody, and keep him [*to hard labour*] for the space of [in lieu of the term originally imposed] unless the said sum [and all the costs and charges of the said distress, amounting to the further sum of and the costs and charges of his commitment and of his conveyance to the said prison] be sooner paid.

Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

32. *Commitment for a Penalty without Distress.*

In the [county of . Petty Sessional Division of].

To each and all of the constables of _____, and to the
 Governor of Her Majesty's prison at _____.

A.B., hereinafter called the defendant, was this day [or on the day of], before the Court of Summary Jurisdiction sitting at , convicted [or ordered] [reciting conviction or order].

And default having been made in payment:

You the said constables are hereby commanded to convey the defendant to the said prison, and there deliver him to the Governor thereof, together with this warrant; and you the Governor of the said prison to receive the defendant into your custody and keep him [*to hard labour*] for the space of _____, unless the said sums [and the costs and charges of his commitment and of his conveyance to the said prison] be sooner paid.

Dated the day of one thousand hundred
and .

J.P., (L.S.)
Justice of the Peace for the [county] aforesaid.

33. Commitment on Sentence of Imprisonment only.

In the [county of . Petty Sessional Division of].

To each and all of the constables of _____, and to the
Governor of Her Majesty's prison at _____.

me this summons [or warrant], and all other persons by whom it may be lawfully served [or executed], and also all constables of the [county] of _____ to serve [or execute] the same within the said [county].

Dated the day of one thousand hundred
and .

J. P.,
Justice of the Peace for the [county] aforesaid.

36. *Recognizance.*

In the [county of . Petty Sessional Division of].

We, the undersigned severally acknowledge ourselves to owe to our Sovereign Lady the Queen the several sums following, namely _____ of _____ as principal, the sum of _____ and _____ of _____ and _____ of _____ as suret _____ the sum of _____ each, to be levied on our several goods, lands, and tenements if the said principal fail in the condition hereon indorsed.

(Signed, where not taken orally) A. B.
L. M.
N. O.

Taken [orally] before me the day of one
thousand hundred and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid, or
Clerk of the Court of Summary Jurisdiction for the
Petty Sessional Division of _____, or
Superintendent of the _____ Police.

CONDITION.

The condition of the above recognizance is such that if the above-bounden principal shall appear before the court of summary jurisdiction sitting at _____ on _____ day, the _____ day of _____, at the hour of _____ in the _____ noon, to answer to the charge made against him by _____ and to be dealt with according to law.

[or shall appear before the court of summary jurisdiction sitting at for sentence when called upon],

[or shall keep the peace and be of good behaviour towards her Majesty and all her liege people, and especially towards for the term of now next ensuing],

[or shall].

Then the said recognizance shall be void, but otherwise shall remain in full force.

37. *Endorsement of Forfeiture of Recognizance.*

In the [county of . Petty Sessional Division of].

Before the court of summary jurisdiction sitting at .

The within-mentioned principal not having complied with the said condition, this court adjudges the within-written recognizances to be forfeited.

Dated the day of one thousand hundred
and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

38. *Endorsement mitigating Forfeiture, &c.*

In the [county of . Petty Sessional Division of].

Before the court of summary jurisdiction sitting at .

The within-mentioned recognizance having been adjudged to be forfeited, and A. B. having applied to this court to cancel [or mitigate] such forfeiture, and having given security to the satisfaction of this court for the future performance of the condition of the said recognizance, and having paid [or given security for payment of] the costs incurred in respect of the forfeiture thereof [or insert such other condition as the court may think just] :

Therefore the said forfeiture is hereby cancelled [or mitigated to the sum of].

Dated the day of one thousand hundred
and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

39. *Notice of Recognizance to be given to the Defendant and his Sureties.*

Take notice that you A. B. are bound in the sum of as principal, and you L. M. [and N. O.] in the sum of as sureties, that you, the said principal, appear before the court of summary jurisdiction sitting at on day, the day of , at the hour of in the noon to answer to the charge made against you by and to be dealt with according to law [or as the case may be], and unless you,

the said principal, appear accordingly the said sums will forthwith be levied on you severally.

Dated the day of one thousand hundred
and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

40. *Security for Penalty, &c.*

In the [county of . Petty Sessional Division of].
A. B., hereinafter called the defendant, was this day [or on
the day of] by a certain conviction [or order]
before the court of summary jurisdiction sitting at ad-
judged to pay the sum of [by instalments of for
every days, the first instalment to be paid] forthwith [or
on the day of] and to give security for the due
payment thereof:

Now, therefore, the defendant, and his sureties C. D. of
and E. F. of , hereby undertake that the de-
fendant will pay the sum adjudged at the time and in the
manner thereby directed, and hereby severally acknowledge
themselves severally bound to forfeit and pay to [the clerk of
the court] the sum of in case the defendant fails to
perform this undertaking.

(Signed, where not taken orally)

A. B., Defendant.

C. D., }
E. F., } Sureties.

Taken [orally] before me the day of one
thousand hundred and .

J. P.,
Justice of the Peace for the [county] aforesaid.

41. *Security to Perform Condition of Forfeited Recognizance.*

In the [county of . Petty Sessional Division of].
A. B., hereinafter called the defendant, was by his recogniz-
ance entered into the day of bound in the sum
of :

And the said recognizance has been adjudged to be forfeited,
but the said defendant has applied to the court of summary
jurisdiction sitting at to cancel [or mitigate] the
forfeiture :

Now, therefore, the defendant and his sureties C. D. of
and E. F. of hereby undertake that the condition
of the said recognizance shall be duly performed [and that the
said shall on or before the day of pay the
sum of for costs incurred in respect of the said forfeiture];
and hereby severally acknowledge themselves severally bound
to forfeit and pay to [the clerk of the court] the sum of
in case the said defendant fails to perform the condition of the
said recognizance.

(Signed, where not taken orally) A. B.
C. D.
E. F.

Taken [orally] before me the day of one
thousand hundred and .
J. P.,
Justice of the Peace for the [county] aforesaid.

42. Notice to Principal of Forfeiture of Security.

In the [county of . Petty Sessional Division of].
To A. B., of .

Take notice that you have forfeited the sum of , for
which you were bound by your undertaking entered into the
day of , and that unless you pay that sum
to at on or before the day of a
warrant of distress will be issued for the recovery thereof.

Dated the day of one thousand hundred
and .

Clerk of the Court of Summary Jurisdiction
for the [county] aforesaid.

43. Order varying Order for Sureties.

In the [county of . Petty Sessional Division of].
Before the court of summary jurisdiction sitting at .

A. B., hereinafter called the defendant, has been under a
warrant of commitment dated the day of , issued
by this court [or the court of summary jurisdiction sitting at
] committed to prison for default in finding suret
in the sum of .

Upon further consideration it is now ordered that the amount
in which the suret of the defendant are to be bound be

reduced to [or that the obligation of the defendant to
find suret be dispensed with].

Dated the day of one thousand hundred
and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

44. *Order to bring up a Prisoner.*

In the [county of . Petty Sessional Division of].

To the Governor of Her Majesty's prison at .

You are hereby ordered to bring A. B., now in your custody,
before the court of summary jurisdiction sitting at on
day the day of , at the hour of in
the noon, that he may enter into a recognizance with
suret conditioned to keep the peace [or appear
and try an appeal from the conviction [or order] of the court
of summary jurisdiction sitting at dated the day
of , or apply for re-examination], and may be there-
upon released from your custody.

Dated the day of one thousand hundred
and .

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

45. *Notice to Parent or Guardian of Child charged with an Indictable Offence.*

In the [county of . Petty Sessional Division of].

To of

A. B. has been charged with , and has been remanded
until the sitting of the court of summary jurisdiction sitting
at on the day of , at the hour of ,
and it has been alleged that you are his parent [or guardian].

If you desire that he be tried by a jury, and object to his
case being dealt with summarily, you must attend before that
court on that day and hour.

Dated the day of one thousand hundred
and .

J. P.,
Justice of the Peace for the [county] aforesaid.

46. *Declaration of Service.*

I of hereby solemnly declare that I did on
the day of , serve of with the [warrant,
summons, notice, process,] now shown to me, and marked
A, by delivering a true copy thereof to him [or by leaving a
true copy thereof with for him at , being his last
[or most usual] place of abode].

Declared before me the day of one thousand
hundred and .

J. P.,
Justice of the Peace for the [county] aforesaid.
Or other description.

47. *Declaration as to Handwriting and Seal.*

I of hereby solemnly declare that the signature
to the document now produced and shown to me, and
marked A, is in the handwriting of of [and that
the seal on the said document is the seal of].

Declared before me the day of one thousand
hundred and .

J. P.,
Justice of the Peace for the [county] aforesaid.
Or other description.

48. *Certificate of Costs of Prosecution of Indictable
Offence dealt with summarily.*

In the [county of . Petty Sessional Division of].
Before the court of summary jurisdiction sitting at .
A. B. [an adult, young person, or child] having been charged
for that he did [state substance of charge], and the above court
having, in pursuance of its statutory jurisdiction, dealt with
the case summarily, on the day of , and convicted
the said A. B. [or dismissed the said charge];—It is hereby
certified that the under-mentioned persons are, for their expenses,
trouble, and loss of time in connexion with the said charge,
entitled to compensation as follows :—

| | | | |
|---|---|----|----|
| | £ | s. | d. |
| C. D. [state trade or profession], the prosecutor | | | |
| residing at , for his attendance here | | | |
| day and night, being altogether | | | |
| hours | | | |

| | | | | | |
|---|-----------------|-------------------------|-----|----|----|
| For travelling | miles each way. | mileage | £ | s. | d. |
| railway fare . | . | . | . | . | . |
| The same for fees payable to the justices' clerk . | . | . | . | . | . |
| The same for fees payable to the clerk of the peace. | . | . | . | . | . |
| E. F. [<i>state trade or profession</i>], a witness, residing | . | . | . | . | . |
| at | , | for his attendance here | day | . | . |
| and night, being altogether | hours | . | . | . | . |
| The same for travelling | miles each way, | . | . | . | . |
| mileage, railway fare | . | . | . | . | . |
| | | | £ | | |

Dated the day of one thousand hundred
and .

J. P.,
Justice of the Peace for the [*county*] aforesaid.

Received 18 , of the , treasurer of the [*county*]
aforesaid the amount above certified.

Note.—The allowances to prosecutors and witnesses must be
in strict accordance with the rules and regulations made by the
Secretary of State on the 9th February, 1858.

49. *Certificate of Clerk of the Peace that the Costs of an
Appeal have not been Paid.*

I hereby certify that at a court of [*adjourned*] general
quarter sessions of the peace holden at , in and for the
of , on the day of , an appeal
by against a conviction [*or order*] of the court of sum-
mary jurisdiction sitting at was heard and determined,
and that it was thereupon ordered that the said conviction [*or*
order] should be confirmed [*or quashed*], and that the appellant
[*or respondent*] should, on or before the day of ,
pay to me the sum of for the respondent's [*or appellant's*]
costs of the said appeal.

And I further certify that the said sum for costs has not
been paid.

Dated the day of one thousand hundred
and .

A. B.,
Clerk of the Peace for the [*county*] aforesaid.

PART II.

**FORMS APPLICABLE TO PROCEEDINGS FOR THE RECOVERY OF A
CIVIL DEBT.**

1. *Complaint.*

In the [county of . Petty Sessional Division of]
 Between A. B. Plaintiff,
 Address
 Description
 and
 C. D. Defendant,
 Address
 Description
 The day of .
 The plaintiff complains that and claims the sum
 for [damages].
 Made before me this day of .
 J. P.,
 Justice of the Peace for the [county] aforesaid.

2. *Summons to Appear.*

In the [county of . Petty Sessional Division of]
Between A. B. Plaintiff,
Address
Description .
and
C. D. Defendant,
Address
Description
To the defendant herein.
You are hereby summoned to appear before the court of
summary jurisdiction sitting at on day the
day of , at the hour of in the noon,
to answer the plaintiff's claim, the particulars of which are
hereto annexed.
Dated the day of .
J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

3. *Summons to Witness.*

In the [county of . Petty Sessional Division of]
 Between A. B. Plaintiff,
 Address
 Description

and

C. D. Defendant,
 Address
 Description
 To of .

You are hereby required to attend before the court of summary jurisdiction sitting at on day the day of , at the hour of in the noon, to give evidence in the above cause on behalf of the [plaintiff or defendant].

Dated the day of .
 J. P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

4. *Judgment.*

In the [county of . Petty Sessional Division of].
 Before the court of summary jurisdiction sitting at .
 The day of one thousand hundred and .
 Between A. B. Plaintiff,
 Address
 Description

and

C. D. Defendant.
 Address
 Description

It is adjudged that the pay the [the sum of
 for debt [or damages] and] the sum of for
 costs [by instalments of for every days, the first
 instalment to be paid] forthwith [or on the day of];
 and in default of payment that the sum due thereunder be
 levied by distress and sale of the goods [or where security
 is accepted and that the be at liberty to give to the satis-
 faction of this court [or of] security in the sum of
 with suret in the sum of [each] for payment
 of the sum adjudged].

J. P., (L.S.)
 Justice of the Peace for the [county] aforesaid.

5. *Judgment Summons.*

In the [county of . Petty Sessional Division of].
The day of one thousand hundred and .
Between A. B. Plaintiff,
Address
Description

and

C. D. Defendant,
Address
Description

To the above-named defendant [or plaintiff].

The plaintiff [or defendant] obtained a judgment against you the above-named defendant [or plaintiff] before the court of summary jurisdiction sitting at on the day of , for the payment of pounds shillings and pence.

And you having made default in payment of the said sum are hereby summoned to appear personally before the court of summary jurisdiction sitting at on day the day of [next], at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the judgment to satisfy the sum payable in pursuance of the said judgment, and also to show cause why you should not be committed to prison for such default.

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

Amount of judgment, and costs . £ d.
Costs of distress against the goods, if any .

£ s. d.
Deduct { Amounts paid . . .
Instalments which were not
required to have been paid
before the date of the sum-
mons . . .

£ s. d.
Sum payable . . .
Costs of this summons . . .

Amount upon the payment of which no further proceedings will be had until default in payment of next instalment .

6. *Order of Commitment.*

In the [*county of* . *Petty Sessional Division of*].
Between A. B. Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

To each and all of the constables of and to the
governor of Her Majesty's prison at .

The plaintiff [*or defendant*] obtained a judgment against the
defendant [*or plaintiff*] before the court of summary jurisdic-
tion sitting at on the day of for the payment
of *l.*

And the defendant [*or plaintiff*] has made default in pay-
ment of the said sum, and the defendant (*or plaintiff*) having
been duly summoned to show cause why he shall not be
committed to prison for such default :

And it being now proved that the defendant [*or plaintiff*]
now has or has had since the date of the judgment the means
to pay the sum then due and payable in pursuance of the
judgment, and has refused [*(or) neglected (or) now refuses or*
neglects] to pay the same, and has shown no cause why he
should not be committed to prison :

It is ordered that the defendant [*or plaintiff*] be committed
to prison for days, unless he sooner pay the said sum
and costs stated below as that on the payment of which he is
to be discharged.

And you, the said constables, are hereby required to take the
defendant [*or plaintiff*] and to deliver him to the governor of
her Majesty's prison at , and you the said governor to
receive the defendant [*or plaintiff*], and there keep him for
days from the arrest under this order, or until he is
sooner discharged by due course of law.

Dated the day of one thousand hundred
and .

J. P.,

(L.S.)

Justice of the Peace for the [*county*] aforesaid.

£ s. d.

Total sum payable at the time of hearing
of the judgment summons

Cost of hearing of summons and of this
order

Total sum on payment of which the prisoner
will be discharged

7. *Certificate for Discharge from Custody.*

In the [county of . Petty Sessional Division of].

Between A. B., plaintiff, and C. D., defendant.

To the governor of Her Majesty's prison at .

I hereby certify that the defendant [or plaintiff], who was committed to your custody by an order of commitment dated the day of , has paid the sum mentioned in the said order as that upon payment of which he would be discharged, and may in respect of the said order be forthwith discharged.

Dated the day of one thousand hundred and .

A. B.,

Clerk of the court of summary jurisdiction at .

8. *Distress Warrant.*

In the [county of . Petty Sessional Division of].

Between A. B.

Plaintiff;

Address

Description .

and

C. D.

Defendant,

Address

Description

To each and all of the constables of .

On the day of , it was ordered by the court of summary jurisdiction sitting at that the defendant [or plaintiff] should pay to the plaintiff [or defendant] for debt [or damages], and for costs, forthwith [or on the day of], and in default the sums due thereunder should be levied by distress and sale of the defendant's goods.

And default having been made, you are hereby commanded forthwith to make distress of the goods of the said defendant [or plaintiff] (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade), and if within the space of five clear days next after the making of such distress the sum stated at the foot of this warrant to be levied, together with the reasonable charges of the making and keeping of the said distress, be not paid, then to sell the said goods by you distrained and pay the money arising thereby to the clerk of that court, and if no such distress can be found to certify the same to that court.

Dated the day of one thousand hundred
and .

J. P., **(L.S.)**
Justice of the Peace for the [county] aforesaid.

| | £ | s. | d. |
|---|---|----|----|
| Amount adjudged | | | |
| Paid | | | |
| Remaining due | | | |
| Costs of issuing this warrant | | | |
| Total amount to be levied | | | |

9. Undertaking to Pay Civil Debts.

In the [county of . Petty Sessional Division of].
Between A. B. Plaintiff,

Address

Description

and

C. D.

Defendant,

Address

Description

It was on the _____ day of _____ ordered by the court of
summary jurisdiction sitting at _____, that the plaintiff recover
against the defendant the sum of _____ for debt [or damages]
and for costs, and that the defendant pay the same to the
plaintiff [by instalments of _____ for every _____ days, the
first instalment to be paid] forthwith [or on the _____ day of
_____,], and that the defendant should be at liberty to give
to the satisfaction of the court [or as in judgment] security in
the sum of _____ with _____ suret _____ in the sum of
[each] for the payment of the said sums.

Now, therefore, the defendant, and C. D. of and E. F.
of as suret hereby undertake that the defendant
will pay the said sum thereby adjudged.

And the said defendant and the said suret hereby severally acknowledge themselves bound to forfeit and pay to the sum of in case the defendant fail to perform this undertaking.

(Signed if not taken orally)

A. B. Defendant.

C. D. } Sureties.
E. F. }

APPENDIX.

Taken [orally] before me the day of one
thousand hundred and .
J. P.,
Justice of the Peace for the [county] aforesaid.

III. SCHEDULE OF FORMS TO CROWN OFFICE RULES, 1886.

CERTIORARI.

1. *General Form of Writ of Certiorari for Orders.*

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to [here insert direction] to A. B. [and C. D. and E. F.] and to every of them greeting: We being willing for certain reasons that [here insert description of order or other proceeding to be removed from the order for the certiorari] (as is said) be sent by you before Us, do command you, and every of you that you or one of you do send forthwith under your hands [or seals] or the hand [or seal] of one of you before Us, in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, all and singular the said orders [or the said order] with all things touching the same as fully and perfectly as they [or it may] have been made by you [or some of you], and now remain in your custody or power, together with this Our writ, that we may cause further to be done thereon what of right and according to the law and custom of England We shall see fit to be done. Witness, John Duke, Baron Coleridge, at the Royal Courts of Justice, London, the day of in the year of Our Lord one thousand eight hundred and eighty-six.

To be indorsed.

By order of Court [or of Mr. Justice].
At the instance of .

This writ was issued by M. N., of X., solicitor for [or, if the case be so, "agent for" G. H., the solicitor for].

13. *Notice to Justices of Application for Certiorari to remove Conviction, or Order of Justices pursuant to Rule 33.*

To A. B. and C. D., Esquires, two of Her Majesty's Justices of the Peace in and for the county [city, *or* borough] of

Take notice that the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, will be moved on the day of , or so soon after as counsel can be heard [*or, if in vacation, that application will be made to a Judge in Chambers at the Royal Courts of Justice, London, on the day of at the hour of in the noon*], on behalf of E. F., for a writ of certiorari to remove into the said Court a certain record of conviction [*or order*], under the hands and seals of you the said A. B. and C. D., as such justices as aforesaid, made on or about the day of , whereby the said E. F. was convicted of [*here describe the offence, or describe concisely the order intended to be removed*].

Dated, &c.

(Signed) E. F. [*or by his solicitor, stating himself to be the solicitor for the above-named E. F.*].

14. *Affidavit of Service of Notice of Application for Certiorari for Conviction; or Order of Justices; or Order of Sessions.*

In the High Court of Justice,
Queen's Bench Division.

I, G. H., of , clerk to , solicitor for E. F., make oath and say:—

1. That I, , did, on the day of serve A. B., Esquire, one of Her Majesty's Justices of the Peace, in and for the county of , with the notice hereunto annexed, marked A., by delivering a true copy of the said notice to the said A. B. at in the said county [*or where the service is not personal, as follows*].

That I, , did, on the day of also serve C. D., Esquire, one other of Her Majesty's Justices of the Peace, in and for the said county, with the said notice, by delivering a true copy of the said notice to and leaving the same with [*the wife, clerk, or servant*] of the said C. D., at the house or residence of the said C. D., situate at in the said county.

If order of Sessions, add—

*In the case of city or borough sessions held before the Recorder only, this paragraph not necessary.

*2. That the said A. B. and C. D. were present at the sessions of the peace in and for the said county when the appeal mentioned in the said notice was heard, and were and are two of Her Majesty's Justices of the Peace in and for the said county, by and before whom the Order of Sessions mentioned in the said notice was made.

Sworn, &c.

G. H.

Filed on behalf of

15. *Summons for Certiorari for Conviction, or Order of Justices, or Order of Sessions.*

In the High Court of Justice,
Queen's Bench Division.

The Hon. Mr. Justice , Judge in Chambers.

†A copy of the conviction or order should be exhibited.

Upon reading the several affidavits of E. F. and G. H., and the exhibit† thereto annexed, filed the day of 188 , and upon hearing counsel [*or the solicitor*] for the said E. F.—

It is ordered that all parties concerned attend the Judge in Chambers at the Royal Courts of Justice on the day of , 188 , at the hour of in the noon, upon the hearing of an application for a writ of certiorari, to remove into this Court a certain record of conviction [*or order*] under the hands and seals of A. B. and C. D., Esquires, two of Her Majesty's Justices of the Peace in and for the county of , made on or about the day of whereby E. F. was convicted of [*or ordered to, &c.* *Here describe shortly the offence or substance of the Order*].

[*If for Order of Sessions, say, a certain Order of Sessions made upon a certain appeal between [the Guardians of the Poor of the Poor Law Union], appellants, and [the Guardians of the Poor of Poor Law Union], respondents, touching the last place of legal settlement of I. K., a poor person chargeable to the said Union (or otherwise shortly describe the appeal), on the grounds :—*

[*If objection on account of any omission or mistake in drawing up of Order or judgment insert grounds.*]

At the instance of

Dated, &c.

16. *Judge's Order for Certiorari for Conviction, or Order of Justices, or Order of Sessions.*

[*Heading as in No. 15.*]

Upon reading the affidavit of L. M., filed the day of , 188 , and upon hearing counsel [*or the solicitors*] on both sides—

It is ordered that a writ of certiorari issue to remove into this Court a certain [*as in the Summons No. 15*].

17. *Certiorari to remove Conviction, Order of Justices, or Order of Sessions.*

VICTORIA, by the grace of God, &c., to the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within our county [*or borough, or other jurisdiction, as the case may be*] of and to every of them, greeting: We being willing for certain reasons that all and singular orders made by you or some of you [*or if order of justices, say by A. B. and C. D., Esquires, two of Our justices assigned as aforesaid (or if conviction, say all and singular records of conviction made, &c., whereby)*]. [*Here shortly describe the substance of the order or offence, &c., to be removed*] (as is said), be sent by you before Us, do command you, and every of you, that you or one of you do send forthwith under your seals, or the seal of one of you, before Us, in the Queen's Bench Division of our High Court of Justice, at the Royal Courts of Justice, London, all and singular the said orders, with all things touching the same, as fully and perfectly as they have been made by you, or some of you, and now remain in your custody or power, together with this Our writ, that We may cause further to be done thereon what of right and according to the law and custom of England we shall see fit to be done.

Witness, &c.

To be indorsed.

By order of Court [*or of Mr. Justice*].

At the instance of the within-named defendant [*or as the case may be*].

This writ was issued by, &c.

18. *Recognizance to prosecute Certiorari for Conviction, Order of Justices, or Order of Sessions.*

Be it remembered, that on the day of , 188 ,
E. F., of , N. O., of , and P. Q., of , come
before me, R. S., Esquire, one of Her Majesty's Justices of the
Peace in and for the county of , and acknowledge to owe
to our Sovereign Lady the Queen the sum of fifty pounds of
lawful money of Great Britain, to be levied upon their goods
and chattels, lands and tenements, to Her Majesty's use, upon
condition that if the said E. F. shall prosecute with effect, with-
out any wilful or affected delay, at his own proper costs and
charges; a writ of certiorari issued out of the Queen's Bench
Division of Her Majesty's High Court of Justice, to remove into
the said Court all and singular orders [*or as the case may be.*
Insert description from Certiorari] and shall pay to the prose-
cutors, within one month next after the said orders shall be
confirmed in the said Court, all their full costs and charges, to
be taxed according to the course of the said Court, then this
recognizance to be void or else to remain in full force.

Taken and acknowledged the day
and year first aforesaid.

Before me,

[*Signed, &c.*]

* This form
must be varied
according to
circum-
stances.

*19. *Recognizance on Special Case on Order of Sessions.*

Be it remembered, that on the day of , 188 ,
A. B., of the parish of in the county of [*on behalf*
of himself and the rest of the inhabitants of the said parish, if the
case be so], and C. D., of , and E. F., of [*here insert*
the names and additions of two householders for bail] come before
me, one of Her Majesty's Justices of the Peace in and
for the county of , and acknowledge to owe to our Sove-
reign Lady the Queen the sum of fifty pounds, to be levied upon
their goods and chattels, lands and tenements, to Her Majesty's
use, upon condition that if he, the said A. B. [*on behalf of him-*
self and the rest of the inhabitants of the said parish of],
shall prosecute with effect, without any wilful or affected delay,
at their own proper costs and charges, certain proceedings in
the Queen's Bench Division of Her Majesty's High Court of
Justice to quash all and singular orders made by the keepers of
the peace and justices in and for the county of between
A. B., appellant, and [*the Churchwardens and Overseers of the*

Poor of the parish of and the Assessment Committee of Union], respondents, touching [a certain rate or assessment made for the relief of the poor of the said parish of on the day of , 188], and shall pay to the prosecutors within one month next after the said orders shall be confirmed in the said Court such costs, if any, as the said Court may order, to be taxed according to the course of the said Court then this recognizance to be void, or else to remain in full force.

Taken, &c.

20. *Recognizance on Special Case on Order of Sessions in Criminal Cases.*

Be it remembered, that on the day of , 188 , A. B., of , and C. D., of , and E. F., of , come before me, , one of Her Majesty's Justices of the Peace in and for the county of , and acknowledge to owe to our Sovereign Lady the Queen the sum of fifty pounds of lawful money of Great Britain to be levied upon their goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if he, the said A. B., shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges certain proceedings in the Queen's Bench Division of Her Majesty's High Court of Justice to quash all and singular orders made by the keepers of the peace and justices in and for the county of upon the appeal of the said A. B. against a certain conviction against him for [*shortly describe offence*], and shall pay to the prosecutor within one month next after the said orders shall be confirmed in the said Court, all his full costs and charges, to be taxed according to the course of the said Court, then this recognizance to be void, or else remain in full force.

Taken, &c.

21. *Return to Writ of Certiorari.*

Indorse the writ thus:—

The execution of this writ appears by the schedules* hereunto annexed. The answer of A. B., Esquire, one of the keepers of the peace and justices within mentioned.

To be signed and sealed by one of the Justices. (L.S.)

* The schedules consist of the Indictment Orders and other documents to be returned.

22. *Memorandum pursuant to Rule 37 that
Recognizance not required.*

The Court having ordered that the within-mentioned order be quashed when returned no recognizance is required by the Crown Office Rules, 1886.

(Signed) [by the Queen's Coroner
and Attorney or other
proper officer.]

23. *Attorney-General's Fiat for application for
Certiorari.*

*If for conviction or Order of Justices, or Order of Sessions, as in No. 16.

Let application be made to the Queen's Bench Division of Her Majesty's High Court of Justice [or to a Judge in Chambers) for a writ of certiorari, to be directed to to remove into the said division* all and singular indictments of whatsoever misdemeanors [or felonies] whereof A. B. is [or may be] before them indicted.

Dated, &c.

(Signed)
R. WEBSTER,
(Attorney-General).

Note.—The writ must be indorsed at the instance of Her Majesty's Attorney-General.

27. *Recognizance to prosecute Information (Criminal).*

Be it remembered, that on the day of , 188 , before Frederick Cockburn, Esquire, Queen's coroner and attorney, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, cometh A. B. [the prosecutor] of, &c., and acknowledges to owe to C. D. [the defendant] the sum of fifty pounds upon condition to prosecute with effect a certain information exhibited against the said C. D. by the said Coroner and Attorney, before the Queen herself, in the said Court for certain misdemeanors, and abide by and observe all such orders and things as the said Court shall direct in that behalf.

Taken, &c.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney).

CRIMINAL INFORMATION.

29. *Notice to a Justice of the Peace of intention to apply for a Criminal Information.*

To A. B., Esquire, one of Her Majesty's Justices assigned to hear and determine divers crimes, trespasses, and other offences committed within the county of .

Take notice, that the Queen's Bench Division of Her Majesty's High Court of Justice will be moved on the day of , or so soon after as counsel can be heard on behalf of C. D., for an order to show cause why an information should not be exhibited against you for certain misdemeanors, in unlawfully, maliciously, and corruptly, and contrary to your duty as such justice of the peace [*here set out the nature of the offence*].

Dated, &c.

(Signed)

H. I.,

Solicitor for the said C. D.

Notice to several Justices.

Commence, as above, and continue why one or more information or informations should not be exhibited against you or some or one of you, &c., as above.

30. *Information (Criminal).*

Middlesex, to wit.

Be it remembered, that Frederick Cockburn, Esquire, coroner and attorney of our present Sovereign Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes in his own proper person, comes here into Court, before the Queen herself, at the Royal Courts of Justice, London, on [*the day the order was made absolute*]. And for our said Lady the Queen gives the Court here to understand and be informed, that [*state offence and then proceed in the same manner as if it were an indictment*].

Second Count.—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further gives the Court here to understand and be informed that, &c.

(*To conclude.*)

Whereupon the said coroner and attorney for our said Lady the Queen prays the consideration of the Court here in the

premises, and that due process of law may be awarded against him, the said B. G., in this behalf to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney).

31. *Information Ex Officio.*

Information by the Attorney-General or Solicitor-General, ex officio.

In the same form, using the name of the Attorney-General [or Solicitor-General] instead of the Queen's coroner and attorney, thus—Sir Richard Webster, Knight, Attorney-General [or Sir John Gorst, Knight, Solicitor-General] of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecutes, whereupon, &c., the said Attorney-General, &c., as in the prayer.

MANDAMUS.

37. *Writ of Mandamus.*

VICTORIA, by the Grace of God, &c.
to
of

greeting.

Whereas by [*here recite Act of Parliament, or Charter, if the act required to be done is founded on either one or the other*]. And whereas We have been given to understand and are informed in the Queen's Bench Division of Our High Court of Justice before Us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of Us and to the great damage and grievance of as We have been informed from their complaint made to Us, Whereupon We, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show Us cause to the contrary thereof, lest by your default the

same complaint should be repeated to Us and how you shall have executed this Our writ make known to Us in Our said Court at the Royal Courts of Justice, London, forthwith then returning to Us this Our said writ, and this you are not to omit.

Witness, &c.

To be indorsed.

By order of Court [or of Mr. Justice].

At the instance of .

This writ was issued by, &c.

38. *Return to Writ of Mandamus.*

The return may either be indorsed on the back of the original writ, or engrossed on a separate parchment schedule.

When indorsed on the back of the original writ.

The answer of [the parties to whom the writ is directed] to this writ. We, the, &c. [the defendants] to whom this writ is directed, do most humbly certify and return to our Sovereign Lady the Queen at the time and place in this writ mentioned, that we have, &c. [when the return is an obedience to the writ, the words of the mandatory part of the writ should be recapitulated in the past instead of the future tense]. As by the said writ we are commanded.

(To be signed by the parties making the return, or a sufficient number to form a quorum, unless they be a corporate body, in which case it is sufficient to attach the corporate seal.)

When the return is engrossed on a separate schedule.

Indorse the original writ [or the copy served] thus :

The return of to this writ [or if the return is obedience, say, the execution of this writ] appears in the schedule hereunto annexed.

The answer of

[To be signed or sealed as above.]

39. *Writ of Prohibition.*

VICTORIA, by the grace of God, &c., to [the keepers of Our peace and Our justices assigned to hear and determine divers

crimes, trespasses, and other offences committed within Our county of [], greeting.

Whereas We have been given to understand that you the said [*justices have entered an appeal by A. B. against, &c.*] And that the said [] has no jurisdiction to hear and determine the said [] by reason that [*here state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said []

Witness, &c.

This writ was issued by, &c.

WRITS OF SUBPŒNA.

161. *Writ of Subpœna before Justices at Petty Sessions.*

VICTORIA, by the Grace of God, &c., to [] and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before such of the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county [*or city, or borough, &c.*] of [] as may be in attendance at a petty sessions of the peace to be held on [] the day of [] at the hour of [] in the [] noon of the same day, at [] in Our said county [*or city, or borough, &c.*] there to testify the truth and give evidence [*if for Complainant or criminal charge,**] on Our behalf against [*if for Defendant between Us and*] A. B. upon a charge of felony [*or misdemeanor, or for certain offences against the statute made for*] on behalf of the defendant [*if so*] and so from day to day until the said charge [*or matter*] is disposed of.†

And this you or any of you are not to omit, under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *In other than criminal matters the nature of the case must be shortly stated, as for instance: there to testify the truth and give evidence upon an application to be then and there made by A. B. for an order in bastardy against C. D. on behalf of the said A. B. [or C. D.].*

† *If duces tecum, add: And that you or such of you in whose custody or power the same be do bring with you and produce before Our justices aforesaid [here describe the document, &c.].*

162. *Writ of Subpœna before a Metropolitan Police Magistrate.*

[As in No. 161, substituting the following direction.]

personally be and appear for T. B., Esquire, one of the magistrates of the police courts of the metropolis, sitting at the police court in the county of , and within the Metropolitan Police District, or such other magistrate of the said police courts as may then and there be present on the day of at the hour of in the noon, there, &c.

163. *Writ of Subpœna before a Stipendiary Magistrate.*

[As in No. 161, substituting the following direction.]

before T. K., Esquire, stipendiary magistrate for the of , or such others of the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our of as may be in attendance at a petty session of the peace, to be held on the day of at the hour of in the forenoon of the same day, at in Our said there to testify the truth and give evidence, &c.

166. *Writ of Subpœna ad Test. before a Justice of the Peace.*

VICTORIA, by the grace of God, &c., to and to every of them, greeting: We command you and every of you that, laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before , Esquire, one of the keepers of Our peace and justices in and for Our county of , or such other justice or justices of the peace of the said county as may be then and there present, on the day of , at the hour of in the noon, &c. [at the public office] at , in Our said county, there, &c.

HABEAS CORPUS.

174. *Summons for Writ of Habeas Corpus ad Subjiciendum.*

In the High Court of Justice,
Queen's Bench Division.

The Honourable Mr. Justice , Judge in Chambers.

Upon reading the several affidavits of, &c., filed the day
of , 188 , and upon hearing Mr. , of counsel, [or
the solicitor] for .

It is ordered that all parties concerned attend the judge in
Chambers on the day of , 188 , at the hour of
 in the noon, to show cause why a writ of Habeas
Corpus should not issue directed to to have the body
of before a judge in Chambers at the Royal Courts of
Justice, London, forthwith to undergo, &c.

Dated, &c.

175. *Order for Writ of Habeas Corpus ad Subjiciendum.*

In the High Court of Justice,
Queen's Bench Division.

The Honourable Mr. Justice , Judge in Chambers.

[*If in a cause on the Crown side, here insert the title, not
otherwise.*]

Upon reading the several affidavits of, &c., filed the day
of , 188 , and upon hearing counsel [or the solicitors] on
both sides [*or as the case may be*]—

It is ordered that a writ of Habeas Corpus issue, directed
to to have the body of A. B. before a judge in Chambers
at the Royal Courts of Justice, London, forthwith to undergo
and receive, &c.

Dated, &c.

176. *Writ of Habeas Corpus ad Subjiciendum.*

VICTORIA, by the grace of God, &c., to , greeting: We
command you that you have in the Queen's Bench Division of
Our High Court of Justice [*or before a judge in Chambers*] at
the Royal Courts of Justice, London, immediately after the
receipt of this Our writ the body of A. B. being taken and
detained under your custody as is said, together with the day
and cause of his being taken and detained, by whatsoever name

he may be called therein, to undergo and receive all and singular such matters and things as Our said Court [or judge] shall then and there consider of concerning him in this behalf; and have you there then this Our writ.

Witness,

To be indorsed.

By order of Court [or of Mr. Justice].
This writ was issued by, &c.

177. *Notice to be served with Writ of Habeas Corpus ad Subjiciendum.*

In the High Court of Justice,
Queen's Bench Division.

[If in a cause already on the Crown side, here insert the title, not otherwise.]

Whereas this Court [or the Honourable Mr. Justice] has granted a writ of Habeas Corpus directed to [or other person having the custody of , if so] commanding him to have the body of before the said Court [or before a judge at Chambers] at the Royal Courts of Justice, London, immediately to undergo, &c.

Now take notice, that you are hereby required to have the body of the said before the said Court [or before the said judge as aforesaid] on the day of , 188 , at the hour of in the noon. And to make a return to the said writ. Or in default thereof, the said Court will then, or so soon after as counsel can be heard be moved for an attachment against you for your contempt in not obeying the said writ [or if in vacation, that application will then be made to one of the judges of the said Court for a warrant for your apprehension, in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated, &c.

(Signed)

M. N., of L., solicitor for

To *[the persons to whom the writ is directed, and any other person upon whom it may be deemed necessary to serve the writ.]*

178. *Notice on having obtained Writ of Habeas Corpus ad Subjiciendum on an Informal or Illegal Commitment.*

[*Heading as in No. 177.*]

Recite the granting of the writ as in No. 177, then say :—

Now take notice that by virtue of the said writ, the said A. B. will be brought before the said Court [or before a judge in Chambers] at the Royal Courts of Justice, London, on the day of , [at of the clock, &c.], in order that he the said may be discharged out of custody as to the commitment by which he is now detained in the custody of the said gaoler.

Dated, &c.

(Signed)

M. N., solicitor for the said

To A. B. and C. D., Esqrs., the
committing magistrates, and
to , the Prosecutor.

179. *Affidavit of Service of Writ of Habeas Corpus ad Subjiciendum.*

[*Heading as in No. 177.*]

I, A. B., of &c., make oath and say :—

1. That I did on the day of , 188 , personally serve C. D. with a writ of Habeas Corpus issued out of and under the seal of this honourable Court, directed to the said C. D., commanding him to have the body of before [this Court], immediately to undergo, &c. [*describe the direction and mandatory part of the writ*], by delivering such writ of Habeas Corpus to the said C. D. personally, at in the county of .

Sworn, &c.

IV. SCHEDULE OF FORMS TO SUMMARY JURISDICTION RULE, 1891.

THE REFORMATORY SCHOOLS ACT, 1866.

Conviction.

In the [county of . Petty Sessional Division of].
Before the Court of Summary Jurisdiction sitting at the
day of , 189 .

A. B., of , hereinafter called the defendant, being under the age of 16 years (having been born, so far as has been ascertained, on the day of , 18), is this day convicted, for that he, on the day of at within the aforesaid, did [*here state the offence*].

And it is adjudged that the defendant for his said offence be imprisoned in Her Majesty's prison at and there kept [*to hard labour*] for the space of ; and in pursuance of the Reformatory Schools Act, 1866, the said defendant (whose religious persuasion appeared to the Court to be) is sentenced to be sent at the expiration of the term of imprisonment aforesaid to the reformatory school at in the county [*or borough*] of , the managers whereof are willing to receive him [*or to some certified reformatory school to be hereafter and before the expiration of the term of imprisonment aforesaid named in this behalf*], and to be there detained for the period of commencing from and after the day of [*the date of the expiration of the sentence*].

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

THE REFORMATORY SCHOOLS ACT, 1866.

Order of Detention.

In the [County of].
Before the Court of Summary Jurisdiction sitting at
the day of , 189 .
To each and all of the constables of and to the Governor of Her Majesty's prison at .
A. B. (hereinafter called the defendant), being under the age of 16 years, to wit of the age of (having been born, so far as has been ascertained, on the day of , 189), was

this day, before the Court of Summary Jurisdiction sitting at _____, convicted for that he, on the _____ day of _____, did [stating the offence as in the conviction].

And it was adjudged that the defendant should for his said offence be imprisoned in Her Majesty's prison at _____ and there kept [to hard labour] for the space of _____; and in pursuance of the Reformatory Schools Act, 1866, the said defendant (whose religious persuasion appeared to the Court to be _____) was thereby sentenced to be sent, at the expiration of the term of imprisonment aforesaid, to the _____ reformatory school at _____ in the county of _____ (the managers whereof are willing to receive him therein), [or to some certified reformatory school to be before the expiration of the said term of imprisonment named in that behalf,] and to be there detained for the period of _____ commencing from and after the day of _____ [the date of the expiration of the sentence].

You the said constables are hereby commanded to convey the defendant to the said prison and deliver him to the governor thereof, together with this warrant; and you, the governor of the said prison, to receive the defendant into your custody in the said prison, there to imprison him and keep him [to hard labour] for the space of _____. And you, the said governor, are further commanded to send the defendant, at the expiration of his term of imprisonment aforesaid, as and in the manner directed by the Reformatory Schools Act, 1866, to the reformatory school at _____ aforesaid [or to the reformatory school named by an order indorsed hereon], together with this order.

J. P., (L.S.)
Justice of the Peace for the [county] aforesaid.

Nomination of School indorsed on the Order of Detention.

In pursuance of the Reformatory Schools Act, 1866, the undersigned, _____ of Her Majesty's Justices of the Peace for the [county] of _____ hereby name the _____ reformatory school at _____ in the _____ of _____ as the school to which the within-named defendant _____ (whose religious persuasion appears to me to be _____) is to be sent as within [add where required in lieu of the school within named].

Dated the _____ day of _____, 189 _____.

J. P. (L.S.)

THE INDUSTRIAL SCHOOLS ACT, 1866, THE ELEMENTARY EDUCATION ACT, 1876, AND THE INDUSTRIAL SCHOOLS ACT AMENDMENT ACT, 1880.

Order of Detention in a Certified [Day] Industrial School.

In the [county of . Petty Sessional Division of].
Before the Court of Summary Jurisdiction sitting at
the day of , 18 .

Whereas [here insert that one of the following recitals appropriate to the case];

And whereas the religious persuasion of the said child appears to the Court to be that of

It is hereby ordered that the said child shall be sent to the certified [day] industrial school at to be there detained [during school hours] until .

J. P.,
Justice of the Peace for the [county] aforesaid.

RECITALS.

A.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A. B., of , a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the day of 18), has been found begging or receiving alms [or begging or receiving alms under the pretext of selling or offering for sale (*here state article, e.g., matches*)] [or being in a street or public place for the purpose of begging or receiving alms] [or of begging or receiving alms under the pretext of selling or offering for sale (*here state article*)].

B.

[29 & 30 Vict. c. 118, s. 14.]

Whereas A. B., of , a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the day of 18), has been found wandering, and not having any home [or settled place of abode, or proper guardianship, or visible means of subsistence].

C.

[29 & 30 *Vict. c. 118, s. 14.*]

Whereas A. B., of _____, a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), has been found destitute, being an orphan [or having a surviving parent who is undergoing penal servitude (or imprisonment)].

D.

[29 & 30 *Vict. c. 118, s. 14.*]

Whereas A. B., of _____, a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), has been frequenting the company of reputed thieves.

E.

[43 & 44 *Vict. c. 15, s. 1.*]

Whereas A. B., of _____, a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), has been lodging, living, or residing with common or reputed prostitutes [or in a house resided in or frequented by prostitutes for the purpose of prostitution.]

F.

[43 & 44 *Vict. c. 15, s. 1.*]

Whereas A. B., of _____, a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), has been frequenting the company of prostitutes.

G.

[29 & 30 *Vict. c. 118, s. 15.*]

Whereas A. B., of _____, a child apparently under the age of 12 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), has been charged before the court with the offence of _____, which is punishable by imprisonment [*here state lesser punishment*], but has not been in England convicted of felony, or in Scotland of theft.

H.

[29 & 30 *Vict. c. 118, s. 16.*]

Whereas the parent [*or step-parent, or guardian*] of A. B., of _____ a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), represents that he is unable to control the said child, and that he desires the said child to be sent to a certified industrial school.

I.

[29 & 30 *Vict. c. 118, s. 17.*]

Whereas the guardians of the poor of _____ union [*or of the parish of _____, wherein relief is administered by a board of guardians*] [*or the board of management of the _____ district pauper school*] have represented to the court that A. B., a child apparently under the age of 14 years (having been born, so far as has been ascertained, on the _____ day of _____ 18 ____), maintained in the workhouse [*or pauper school*] of the said union [*or said parish*], [*or in the said district pauper school*], is refractory [*or is the child of parents, one of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment*], and that it is desirable that the said child should be sent to a certified industrial school.

K.

[39 & 40 *Vict. c. 79, s. 12 (1).*]

Whereas an attendance order under the 11th section of the Elementary Education Act, 1876, was made against the child A. B., of _____ (born, so far as has been ascertained, on the _____ day of _____ 18 ____),

M.

Q Q

day of 18), and who is under the said Act prohibited from being taken into full-time employment, on the ground that his parent habitually and without reasonable excuse neglected to provide efficient elementary instruction for him, and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the court that he has used all reasonable efforts to enforce compliance with the said order] [or the said non-compliance was not the first non-compliance with the said order].

L.

[39 & 40 *Vict. c. 79, s. 12 (2)*].

Whereas an attendance order under the 11th section of the Elementary Education Act, 1876, was made against the child A. B., of (born, so far as has been ascertained, on the day of 18), on the ground that he was found habitually wandering [or not under proper control] [or in the company of rogues, vagabonds, or disorderly persons] [or reputed criminals] and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the court that he has used all reasonable efforts to enforce compliance with the said order] [or whereas the said non-compliance was not the first non-compliance with the said order].

Dated the fifth day of August, 1891.

(Signed) HALSBURY, C.

INDEX.

ABANDONMENT,

of summons, conviction, order, &c., 101.
of notice of appeal, 309.
See COUNTERMAND.

ABATEMENT,

by death, 100.
by ceasing to hold office, *ib.*

ABETTOR. *See* ACCESSORIES.

“ABODE, place of,” for service of summons, 97, n. (7).

ABSENCE, proceedings in defendant’s, 107.

ACCESSORIES, conviction of, 34, 81.

ACQUITTAL, former, a defence, 154.

“ACT committed,” effect of reckoning time from, 65.

“ACT complained of,” meaning of, 64.

ACTION against justices,

acts within jurisdiction, 384.
judicial acts, *ib.*
11 & 12 Vict. c. 44, s. 1, requires proof of malice and absence of reasonable and probable cause, 386.
irregularity distinguished from want of jurisdiction, 387—389.
acts without or in excess of jurisdiction, 390.
11 & 12 Vict. c. 44, s. 2, requires conviction to be quashed, 391
illegal alternative added to punishment, 393.
omission of costs in conviction—distress for costs, *ib.*
refusing to hear counsel or solicitor in absence of defendant, 394
information disclosing no offence, *ib.*
there should be not merely general, but particular, jurisdiction over subject matter, *ib.*
distraining for poor-rate on one not liable, 395.
wrongfully committing, without first issuing warrant of distress, *ib.*
parol commitment, 396.
detaining person without regular information, 396.
without hearing charge, *ib.*
to compel a compromise, *ib.*
removing driver to see name on cart, 397.
in respect of warrant to answer information, 103, n. (z), 106.

ACTION against justices—*continued.*

- for neglecting to return conviction, 282, n. (a).
- subsisting conviction, 390, and *ib.*, n. (x).
 - differing from commitment, 390, n. (x).
 - ambiguous conviction, *ib.*
- who liable when warrant granted on defective conviction, 397.
- for levying a poor-rate or exercising a discretionary power, 398.
- for obeying rule of Queen's Bench, *ib.*
 - after conviction affirmed on appeal, 400.
 - after case stated under 20 & 21 Vict. c. 43...398, n. (u).
- proceedings in, when set aside, 400.
- imposing terms of not bringing, 449, n. (a).
- in what cases nonsuit or verdict for defendant, 400.
- for words, 401.
- not to be sued in county court if defendant objects, *ib.*
- when not liable for issuing warrant for possession of tenements, *ib.*
- in what county to be laid, 402.
- limitation of, as to time, *ib.*
- notice of, 404.
 - time of, how reckoned, 406.
 - when necessary, *ib.*
 - form of, 411
 - by whom to be given, 412.
- tendering amends, 405, 414.
- general issue, pleading the, 414.
- paying money into court, 502.
- evidence, 415.
- damages, 416.
- costs, 417.
 - of justices payable out of county fund, 418.

ACTION against constable, 424. See CONSTABLE.
 surveyor of highways, 398, n. (u).

ADJOINING counties,
 justices acting for, 23, 29.
 river running between, 29, 30.

ADJOURNMENT,
 of hearing by justices, 106, 113.

- where defendant requires time, 112.
- where variance between proof and allegation, and defendant misled, 106.

 to what time hearing may be adjourned, 113.
 of appeal, 302--304.
 power of sessions to order, *ib.*
See "APPEAL."

ADJUDICATION,
 form of, 200.
 when time for appeal runs from verbal, 59--62.
 confined by information, 75.

- summons, 94.

See JUDGMENT.

ADVOCATE. See COUNSEL and SOLICITOR.

AFFIDAVIT,

for *habeas corpus*, 337.

controverting truth of return to a writ of *habeas corpus* by, 341.

for *certiorari*, 355.

showing want or excess of jurisdiction or fraud, 372.

of service of notice for *certiorari*, 358.

exculpatory, necessary, in moving for information against justices, 398.

justices showing cause by, 339, 400.

AFFIRMANCE of conviction. *See CERTIORARI.*

“AFTER,” effect of, in reckoning time, 63, n. (i), 65, n. (s).

“AGGRIEVED” party, 292, and *ib.*, n. (u), 13, n. (u).

AGREEMENTS,

to end criminal proceedings, 55—57, 162.

AIDERS and abettors, 34, 81.

ALDERMAN, deputy, not a justice, 409.

ALDERNEY,

warrant issued in, may be backed in England, 26.

Summary Jurisdiction Acts do not extend to, 69.

ALLOWANCE. *See APPRENTICESHIP.*

ALTERATION,

of order after signature, 229, n. (b).

of case after it has been stated by justices, 327, n. (z), 330.

in judgment on appeal may be made during the continuance of the sessions, 310.

ALTERNATIVE,

stating an offence in the, 177, 198, 270.

adding to conviction an illegal, 393.

AMBIGUITY. *See CERTAINTY.*

AMENDMENT,

of summons, 131, n. (p).

of convictions and orders, 175, 234, 237, 309, 310, 330.

of warrant of commitment, 271.

of grounds of appeal, 308.

of cases granted by justices, 327, n. (u), 330.

of writ of *habeas corpus*, 338, n. (p).

of return thereto, 347.

AMENDS, tendering of, by justices, 405.

AMOUNT, limitation of authority of justice as to, 57.

“ANY two justices,” effect of these words, 40, n. (c).

APPEAL. *See Case stated under 20 & 21 Vict. c. 43, and case stated under s. 33 of Summary Jurisdiction Act, 1879.*
origin of, 12, 13, 282.

APPEAL—*continued*.

- not known until the time of Charles 2...12.
- when, stays execution until the determination of, 285.
- suspends issuing of *certiorari*, 359.
- abandoned by stating case under 20 & 21 Vict. c. 43...324.
- when it lies, 282—287.
- when the proper remedy, 325, 358, n. (a), 384, n. (a).
- how authorized, 13, 282.
- must be expressly given by statute, 282.
- notice of right of, when to be given by convicting justices, 293.
- notice of appeal, 287.
 - in writing, 288.
 - Form of, ib.*
 - provisions of Summary Jurisdiction Act, 1879...288.
 - "clear days," 288.
 - "at least," *ib.*
 - "first day of sessions," 289.
 - "immediate," *ib.*
 - "forthwith," *ib.*
 - "after cause of complaint," *ib.*
 - Sunday, 290.
 - cross notice of appeal 293.
 - computation of days in notice, 288. *See TIME.*
- service of, 292.
 - on whom, 290.
 - by whom, 291.
 - how, 292.
- dispensing with notice, 293.
- respite, 294.
- notice of trial, *ib.*
- fresh notice, *ib.*
- recognizances, 295.
- deposit, *ib.*
- to what sessions appeal must be, 297.
 - as to place, *ib.*
 - to borough sessions, *ib.*
 - as to time, 298.
 - next* sessions, 298.
 - after judgment, *ib.*
 - after cause of complaint, 299.
- dismissal for informality, conclusive, 299.
- second notice, when proper, 301.
- grounds of appeal, 288, 308.
 - amendment of, 308.
- suspension of execution by, 285.
- adjournment, 302.
 - only proper on regular appeal, 303.
 - for opinion of judges of assize, 303.
- the hearing, 305.
- sessions can only notice conviction returned by justice, *ib.*
- liability of magistrate for not returning conviction after notice, 238, 282, n. (a).
- personal appearance of appellant and respondent, 305, n. (t).
- proof of notice of appeal, 306.
 - of conviction or order, *ib.*
- fresh evidence may be given on hearing of appeal, 305, 307.
- formal objections must be stated at once, 307.
- judicial notice of petty sessional division, 308.
- interested justice present during hearing. 43—52, 322.

APPEAL—continued.

- amendment of orders, &c., on, 309.
- altering judgment during sessions, 310.
- decision of sessions conclusive, though erroneous, *ib.*
- power to state special case without going to sessions, 315.
- sessions not bound to give reasons, or make special entries, 316.
- practice of sessions conclusive, unless manifestly unjust, *ib.*
- costs on, 317—319.
 - amount of, to be specified in order, 318.
- enforcing order of sessions, 320.
- effect of confirming conviction on, upon liability of magistrate, 321, 400.
 - of judgment on case under 20 & 21 Vict. c. 43, upon, 324.
- abandoning, 295.
- Forms* (Appendix), 537.

APPEARANCE,

- effect of, 99, 109.
- may be by counsel or solicitor, 104, 111.
- proceedings upon non-appearance, 101, 109.
- proceedings after appearance, 109.
- irregularity in summons cured by, *ib.*
- absence of summons cured by, 92, n. (*s*), 109.
- after, defendant may pray time, 112.
- enforcing, 101—108.
- if defendant does not appear, judgment in his absence when valid, 95, 107.
- personal, of appellant and respondent at sessions, 305, n. (*t*).
- of justices to receive judgment upon criminal information, 423.

APPELLANT,

- relying on form, concluded, 301, 305.
- presence of, at hearing of appeal, 305, n. (*t*).

APPLICATION of penalties. *See* PENALTIES.

APPOINTMENT of justices, 1, 2.

APPREHENSION, before conviction, 101—108. *See* WARRANT.

APPRENTICESHIP, allowance of indenture of, when ministerial, and when judicial, 20, 21.

ARREST, 101—108. *See* SUNDAY—WARRANT.

ASSAULT,

- committed in the assertion of title to land, 149.
- conviction for, on application for sureties to keep the peace, 74.
- certificate of conviction, or of dismissal of complaint, 155—157, 166, 167.
- granting of a ministerial act, 22, n. (*m*).
- compromise of prosecution for, 55.
- summons under Metropolitan Police Act, for assaulting constable in execution of his duty, conviction cannot be for common assault, 75.
- conviction may be on summons for, although evidence of rape, 75, 140.
- certiorari* to remove proceedings for

“ASSIGNED,” omission of, in style of justices, 191, n. (n).

ASSIZE, adjourning appeal to take opinion of judges of, 303.

“AT LEAST,” effect of, in reckoning time, 63, 288.

ATTACHMENT,

against justice for acting, where a party, 44.

for non-obedience to order of sessions, 321.

justices liable to, for proceeding after the delivery of a *certiorari*, 360.

for non-payment of costs on *certiorari*, 380.

ATTENDANCE of witnesses, compelling, 119.

ATTESTATION of conviction, 229.

ATTORNEY. *See* SOLICITOR.

ATTORNEY-GENERAL,

when required to lay information, 78 and 79, n. (d).

general authority of, in suing out the writ of *certiorari*, 353, 356.

not bound by restrictions in *certiorari* acts, *ib.*

AUDITOR, proceedings by, to recover from poor-law officers, 70.

AUTREFOIS ACQUIT, a good defence to a subsequent information for same offence, 154—159, 167.

AUTREFOIS CONVICT, a good defence to a subsequent information for same offence, 154.

AUTHORITY,

claim of, 145—152.

competition of, between justices, 53.

of justices, presumption in favour of, 185.

delegation of, 66, 319.

See JUSTICES.

AVOIDANCE. *See* ABATEMENT.

BACKING warrants, 22, n. (m), 25, 26.

BAIL,

admitting to, is a judicial act, 21, n. (m).

of person arrested without warrant, 499.

justice refusing to take, 388.

after commitment in execution, 280.

defendant admitted to, on return to *certiorari*, 371.

BAKER,

where prohibited from acting as justice, 51.

conviction of, 140.

exercising his calling on Lord's day, incurs only one penalty, 210.

BANKRUPTCY, disqualifying justice from acting, 52.

BASTARDY,

- application for order in, 60, 69, 134.
- how far Summary Jurisdiction Acts extend to orders, &c. in, 69.
- service of summons in, 69.
- second summons, 60, n. (y), 96, n. (o).
- mother of the child must be a witness, 134, n. (c).
- defendant a competent witness, 124.
- corroborative evidence, 134.
- notice of appeal in, 60, 69, 287.
- recognizance in, 69.
- provisions of Summary Jurisdiction Acts, as to notice of appeal, stating special case, applicable to, 69.
- order in, 171.
 - amendment of, 309, n. (m).
 - not stating that it was made within forty days after service of summons, 172.
- uncertainty of commitment in, 272.
 - condition of discharge to be distinctly expressed, *ib.*

BEGIN, right to,

- on appeal, 306.
- on argument, of case stated under 20 & 21 Vict. c. 43, 329.

BEHAVIOUR, binding over to be of good, 239, 388.**BERWICK-UPON-TWEED, Summary Jurisdiction Acts extend to, 69.****BILLS OF MORTALITY, 196.****“ BINDING, final and conclusive, ” effect of these words upon right of appeal, 284.****BLANK,**

- in form of conviction, 174, 228, n. (x), 319, n. (c).
- warrant, 228, n. (x), 387.

BONA FIDES,

- of claim of title, 145, 152.
- of disputing validity of church rate, 152.
- when a question for the jury, 410.
- not in itself a defence unless declared to be so by statute, 411, n. (z).
- in acts of justices, 408, 409.
 - constable, 432.
- See* TRAVELLERS.

BOROUGH,

- jurisdiction of justices of, 24, 34.
 - of county justices in, 24, 34—37.
- who may not act as justices in, 51.
- justices do not require qualification by estate, 27.
 - or to be burgesses, *ib.*
 - but must reside in borough, or within seven miles of it, *ib.*
- sessions, notice of appeal to, 287, 297.
- See* MUNICIPAL CORPORATIONS ACT.

BOUNDARIES,

- of divisions of county justices, 43.
- of parish *ad medium filum* of highway or river, 32, n. (f).
- Boundary Act, effect of, 31.

BREAD. *See* BAKER.

BREWERS, not to act as justices under laws relating to beer, 51.

BREWING VESSELS, conviction for concealing, 178.

BRISTOL CHANNEL, offences committed in, 31, n. (f).

BUILDING,

order by district board of works to demolish, 92, 201.

See METROPOLITAN BUILDING ACT.

CAPIAS AD SATISFACIENDUM, after affirmance of conviction in Queen's Bench, 382.

CASE, SPECIAL,

power to state, without going to sessions previously, 296, 314.

effect of, upon statutes taking away *certiorari*, 354, n. (x).

unless it be granted, sessions not bound to re-hear appeal, 301.

reserving, by sessions, 319, 377.

recognizance for prosecution of appeal not forfeited by agreement for, 315.

CASE STATED under 20 & 21 Vict. c. 43...323—335.

the statute 20 & 21 Vict. c. 43 (app.), 473.

summary of its provisions, 323.

party dissatisfied with decision of justices as erroneous in point of law may apply to them for case, *ib.*

they may refuse it if application in their opinion frivolous, *ib.*

unless made by direction of attorney-general, 324.

superior court or judge at chambers may order case to be stated, 323, and n. (b).

operates as abandonment of appeal, 324.

certiorari may still issue, it seems, if objection to jurisdiction, 360.

certiorari not required to remove conviction, 324.

what cases within statute, 325.

dismissal of complaint is, *ib.*

so order under Lord Campbell's Act, *ib.*

so question as to legality of theatrical performance, *ib.*

not complaint of improper rating, *ib.*

or refusal to enforce payment of rates, which justices compelled to enforce if good on face and unappealed against, *ib.*

or refusal to order local authority to enter premises under s. 305 of Public Health Act, 1875, *ib.*

or dispute under Friendly Societies Acts, 326.

when functions of justices ministerial, statute does not apply, *ib.*

conditions to be performed, 324.

application for case within three days after decision of justices, 324.

recognizance to be entered into within such three days, *ib.*, 324.

case to be transmitted to court within three days after received, *ib.*

or case struck out of crown paper, 326.

this provision cannot be waived, 327.

not sufficient merely to transmit to London agent, 326,

but must be lodged in crown office, *ib.*

Sunday counted in the three days, 327.

CASE STATED under 20 & 21 Vict. c. 43—*continued*.

conditions to be performed—*continued*.

before transmission to and lodging of case in court, notice in writing of appeal and copy of case to be given to respondent, 326.

where respondent cannot be found, 327.

two clear days before day for argument, copies of case to be delivered to judges, 328.

if respondent does not deliver his copies, appellant should do so for him, *ib*.

in such case, unless respondent pay for them, his counsel not heard, *ib*.

the case is entered on a list in crown office, 328.

the argument, 329.

who to begin, 329.

respondent not appearing, appellant must still show decision wrong, 329.

finding of justices on facts conclusive, 330.

court only inquire whether the facts warrant the conclusion in law, *ib*.

refuse to give opinion on mere question of fact, *ib*.

objections not raised before justices can be taken in court, *ib*.

amendment, *ib*.

by court, not before argument, 331.

by justices, 327.

remitting case to justices, 330, 331.

costs,

justices not liable for, 331.

may be awarded against the crown, *ib*.

unsuccessful party generally pays costs, *ib*.

although he may not appear in support of case, *ib*.

successful party should ask for, *ib*.

what costs allowed, *ib*.

when case struck out, 331.

when paper books not delivered, 328.

justices not liable to action for enforcing order after decision of court, 325.

CASE STATED, under s. 33 of Summary Jurisdiction Act, 1889.

stating case, 332.

time for stating, 333.

cases within statute, 334.

mandamus to state case, 335.

CAUSE OF ACTION, to be stated in notice of action, 411.**"CAUSE OF COMPLAINT,"** 64.**CERTAINTY**,

indispensable in conviction, 177, 390, n. (x).

degree of certainty required 177, 197.

in return to *habeas corpus*, 340.

CERTIFICATE,

of conviction or dismissal of complaint, 100, 101, n. (n), 154—159, 166, 167.

time for granting, 63, n. (k).

CERTIORARI,

- removal of conviction by, 329, 348.
- where grantable, 348.
- the usual mode by which summary proceedings are reviewed by superior court, 349.
- lies of common right, *ib.*
- cannot be taken away by implication, 350.
 - but only by express words, *ib.*
 - not by general reference to former acts, 351.
- when taken away, *ib.*
 - not from prosecutor, 353.
 - nor where want of jurisdiction, 354.
 - or fraud, *ib.*
 - what objections go to jurisdiction, 354, n. (x).
 - showing want of jurisdiction or fraud by affidavit, *ib.*, 355.
- when necessary to remove conviction by, 321, 354.
 - not on case stated under 20 & 21 Vict. c. 43 ..324, 332, 377.
 - not on case from quarter sessions, 314, 377, 500.
- effect upon, of case stated under 20 & 21 Vict. c. 43...332.
- manner of obtaining. at the suit of the crown, 355.
 - by attorney-general *ex officio*, 356.
 - by private prosecutor, *ib.*
 - at the suit of the defendant, 357.
- affidavit for, 358.
- issues on *ex parte* application, 357.
- rule absolute in first instance, *ib.*
 - must state objections, 359.
- not to issue while appeal is depending, *ib.*, 360.
 - contra*, it seems after case granted under 20 & 21 Vict. c. 43, if objection to jurisdiction, *ib.*, 332, 360.
- may be refused where the ground alleged is more properly the subject of appeal, 360.
- time of issuing, 361.
- must be applied for in six months after conviction, &c., 362.
- six days' notice thereof to be given to justices. *ib.*
 - requisites of such notice, 361—365.
 - service of, 363, 364.
- issues only at instance of party giving notice, 364.
- before sued out, recognizance to be entered into for costs, 366.
 - two sureties to be given, besides defendant's recognizance, *ib.*
- restrictions in *certiorari* acts apply solely to defendants, and not to prosecutors, 366.
- direction of, 367.
 - must be delivered before time of return expires, 367.
 - from delivery, supersedes authority of justices below, *ib.*
 - does not stay execution if begun, 368.
- return, how enforced, 369.
- making the return, *ib.*
- return must be under seal, *ib.*
 - and on parchment, *ib.*
 - to be filed in the crown office, *ib.*
- examinations, &c., need not generally be returned, 370.
 - when they should be returned, *ib.*
- impertinent matter disregarded, *ib.*
- if return imperfect, it will be quashed, *ib.*
- formal conviction may be drawn up before return of, 234.
- variance between the writ and return, ground for quashing it, 371.
- quashing return *quia improvide emanavit*, *ib.*
- when *procedendo* awarded, *ib.*

CERTIORARI—continued.

- defendant in custody may be admitted to bail pending discussion in superior court, *ib.*
- proceedings after return, 372.
- no plea allowed to the conviction, *ib.*
- affidavits, how far admissible, 372—376.
- no facts in the return allowed to impeach conviction or supply defects therein, 377.
- remedy for false return, 378.
- filing return, *ib.*
- argument, *ib.*
- amendment of conviction, &c., 379.
- quashing order, &c., in part, *ib.*
- defendant dying after return, and before argument, *ib.*
- costs on affirmance of conviction, *ib.*
- what costs to be paid, *ib.*
- party not liable for costs where *certiorari* quashed, *quia improvide*, &c., 380.
- proceedings on recognizance, 380.
- scire facias* on recognizance, *ib.*
- attachment for costs. *ib.*
- case where no costs allowed on affirmance of conviction, 381.
- execution after affirmance in Queen's Bench, *ib.*
- process for recovering penalty must issue out of that court, *ib.*
- not necessary for enforcing order of sessions, 321.
- or to remove conviction on case granted by justices, 324.
- no appeal from Queen's Bench, 361.
- Forms*, (Appendix), 574—580.

CHAMBERS,

- judge at, granting writ of *habeas corpus*, 357.
- certiorari*, 357.

CHARGES,

- of commitment. *See* COMMITMENT.
- of distress. *See* DISTRESS.

CHILDREN,

- limitation of punishment of, 221.
- summary trial of indictable offences by, 481, 548, 565.

CHURCHWARDENS, signing notice of application for *certiorari*, 365.

CINQUE PORTS,

- 18 & 19 Vict. c. 48, as to separate jurisdiction of 430, n. (d).

CIRCUMSTANTIAL EVIDENCE, 135, n. (e).

CITY,

- county justice residing in, 23, 24.
- judicial notice taken of city being county in itself, 37 n. (o).

CIVIL DEBT,

- commitment for non-payment of, 265.
- Forms* of proceedings, 568—573.

CIVIL PROCEEDINGS,

- as distinguished from "criminal." *See* CRIMINAL PROCEEDING.
- criminal charges arising from generally postponed, 90.

CIVIL PROCEEDINGS—continued.

how far they affect criminal, 158.
before justices, 498.
conviction, when evidence in, 439.

CLAIM of title or authority. *See* **TITLE**.

CLAUSES CONSOLIDATION ACTS, powers of justices under. *See*
LANDS CLAUSES—RAILWAY.

"CLEAR DAYS," effect of in reckoning time, 62, 288.

CLERK OF THE PEACE,

lodging convictions with, 232.
directing costs to be paid to, 318.
effect of omission to direct costs to be paid to, 354, n. (x), 387.
duty of, in regard to fines, 259.

COALS, conviction for selling, short of weight, 211.

CO-DEFENDANT discharged and giving evidence; 121, n. (b).

COLLATERAL proceedings, effect of conviction in, 437—440.

COLORE OFFICII, 431, n. (g), 435.

COMMISSIONERS formerly appointed for the execution of penal laws,
2, 3.

COMMITMENT,

mandamus or rule to issue, 357 and *ib.* n. (l).
until return of warrant of distress, 251, 266.
for want of distress, 264, 266.
 where goods sufficient to answer part, 266.
 or one of two warrants, *ib.*
without issuing warrant of distress, 251, 264, 395.
not void for any defect therein, if a valid conviction to sustain the
 same, 281.
to be drawn up as soon as possible after commitment ordered, 268.
postponement of issue of warrant of, 267.
by parol, 394, 395.
without hearing charge, 395.
of defendant after affirmance of appeal, 285—287.
of witness for refusing to give evidence, 120.
for "a criminal matter," 343.
Forms of warrant, 267, 544—549, 557—560.
 time of imprisonment and condition of discharge, 272.
 hard labour, 277.
in force until return day, 281.
charges, &c. of, 279.
execution of, 277.
 not on Sunday, 278.
 where defendant already in custody, 279.
 production of warrant, 278.
 defendant entitled to copy of, 231, n. (a).
 backing warrant, 278.
tender of penalty, 280.
liberation on condition not fulfilled, 281.

COMMITMENT—*continued*.

- amendment, 271.
- substituting good for bad, *ib.*, 233, n. (f).
- drawing up good conviction after commitment, 234.
 - not after return to *habeus corpus* filed, 347.
 - nor after commitment reciting conviction held bad at sessions, 234.
 - if good on face, but founded on bad conviction, *certiorari* must issue to remove conviction, 338, 347.
 - bad in part, 275, 341.
- for non-payment of civil debt, 265
- for non-payment of instalments, 266.
- Forms* of, 557—560.

COMMON INFORMER, when information not to be laid by, 77, 78.

COMPANIES CLAUSES ACTS, who may not act as justice under, 51.

COMPENSATION,

- to prosecutor and witnesses in certain cases of larceny, 226.
- in cases of injury to property, 226.
- under Lands Clauses Act, justices awarding, 57, 70.
 - justices cannot review master's taxation of costs in cases of, 22, n. (m).
 - need not be in writing, 82, n. (s), 170, n. (c).
 - removing order by *certiorari*, 349, n. (x).

COMPETENCY of witnesses, 119.

COMPLAINT. *See* INFORMATION.

“cause or matter of,” 65, 378.

COMPLETION of offence in one county, it having been commenced in another, 28, n. (v).

COMPROMISE of offences, 55—57, 162.

COMPOUNDING OFFENCES, 55—57.

COMPULSORY. *See* DIRECTORY.

CONCLUSION of conviction, 229.

CONCLUSIVENESS,

- of facts stated in conviction, 154, 341, 372, 390, n. (x), 436.
- of statement in order of place being highway, 344, n. (u).
 - conservatory not being erection within Metropolitan Building Act, *ib.*
- of dismissal of appeal for informality, 292.
- of decision of sessions, 307, 310, 316.

CONCURRENCE of magistrates in judicial acts, 39, 40, n. (a).

CONCURRENT jurisdiction of borough and county justices, 35.

CONDITIONS,

- precedent to the exercise of summary jurisdiction, 53.
- of discharge must be stated in a warrant of commitment, 273, 274.

CONFESSION,

- conviction may be on, 6, 114.
- supplies the want of evidence, 117.
- cures objection to mode of taking depositions, *ib.*
- general effect of, 114, 117.
- admits only the fact, not the law, 115.
- does not extend or help complaint, 116.
- not stated in conviction, 117, 176.

CONSECUTIVE TERMS of imprisonment, 269.**CONSENT,**

- to interested justice acting, 48.
- to taxation of costs. *See* COSTS.

CONSOLIDATION CLAUSES ACTS,

- power of justices under, 46, 48.
- who may not act as justice under, 46, 48.

CONSTABLE,

- parish, 424, n. (a).
- county and district, 425.
- metropolitan police, 424, n. (a).
- chief, *ib.*
- is to execute warrant within jurisdiction of justice issuing or backing it, 247, 277, 433.
- apprehending defendant to answer information, 105.
- executing warrant of distress, 247.
 - selling distress, 255.
 - must be for ready money, *ib.*
- executing warrant of commitment, 277, 279.
- returning warrant, 247.
 - refusing to do so, 257.
- protected by warrant, 247, 426.
 - though granted without jurisdiction, 427, n. (k).
 - what acts protected, 429.
- when not protected, 430.
- demand of warrant, 423
- furnishing copy of, 427.
- stat. 24 Geo. 4, confined to torts, *ib.*
 - not to action for money had and received, 428.
 - nor to replevin, *ib.*
- action against, for acts done in execution of convictions, 426.
 - in what county venue to be laid, *ib.* 435.
 - may plead general issue, 424.
 - limitation as to time, *ib.*
 - when entitled to notice of action, 425.
- protection under Small Tenements Recovery Act, 424, n. (a).
- apprehending offender without warrant, 101.

CONSTITUTION of Court, 110.**CONSTRUCTION,**

- of convictions, 170, n. (i), 182—187.
- of penal statutes. *See* STATUTE.

CONTEMPT, commitment for, 274, n. (d).**CONTINUANCE** of offence, when a new one, 154, n. (z).

CONTINUING cause of action, 65, n. (i).

CONTRA FORMAM STATUTI, allegation of, 177.

CONTRA PACEM unnecessary, 180.

CONVICTION,

observations on the policy of allowing compendious forms, 13, 14.

proceedings preliminary to, 67—165.

definition of, 168.

is matter of record, *ib.*

distinction between, and orders, 170—173.

general form and qualities of, 168—

justices should be together when making conviction jointly, 40,

ib. n. (a).

so on view, *ib.*

limited by information, 73.

must be certified under hand and seal of justices, 169.

ought to be in words and figures at length, 176.

may be in the past tense, *ib.*

judgment to be recorded in present tense, *ib.*

certainty of, 177.

bad, if disjunctive or alternative, *ib.*

pursuing words of statute, *ib.*

technical words in, unnecessary, 179.

statutory forms of, 173.

as to provisions in statute declaring it not bad for want of form, 174.

what may be rejected as surplusage, 175.

impossible date, *ib.*

being an entire judgment, must be good throughout, 181.

construction of, 182.

nothing intended in favour of, or against, 187.

jurisdiction must appear, 185.

general form of, under Summary Jurisdiction Acts, 173, 188.

the several parts of, 188.

offender's name, 189.

name of person aggrieved, *ib.*

name, &c. of justice, 190.

time of offence, 192.

place of offence, 194.

description of offence, 188, 197.

pursuing words of statute, 198.

negating exemptions, 198.

adjudication of punishment, 199.

several penalties, 206.

award and distribution of penalty, 222.

restitution of property, 226.

costs, 227.

conclusion, 229.

attestation, *ib.*

date, *ib.*

information, &c. not stated in, 85, 100.

practice as to drawing up, 232.

amendment of, 233, 237.

filing at sessions, 237.

copy of, defendant's right to, 231.

copy delivered not binding on justice, 334.

drawing up formal, 233—237.

CONVICTION—continued.

drawing up formal—*continued.*

may be at any time before return to *certiorari*, 233.

although after commitment, *ib.*

or distress, *ib.*

or action against magistrate, *ib.*

or semble, after conviction returned to sessions, *ib.*

not after commitment reciting conviction held bad at sessions, 233, n. (f).

nor after return filed to *habeas corpus*, 347.

must be conformable to facts, 235.

joint, not ordered to be drawn up on joint information, 236, n. (y).

defective, who liable, when warrant granted upon, 397.

confirmed on appeal, no action for defect in, 398.

so if case stated under 20 & 21 Vict. c. 43...398, n. (u).

appeal against, 282.

removal by *habeas corpus*, 336.

by *certiorari*, 348, 354.

case stated upon, 323.

costs, upon affirmance of, in queen's bench, 379.

execution after affirmance of, in queen's bench, 383.

execution upon, by distress, 243.

by commitment, 263.

action against justices for acts in pursuance of, 385.

how far subsisting, protects justices, 390, *ib.*, n. (x).

how far conclusive, as to jurisdiction of justices, 372.

effect of, in collateral proceedings, 437.

when an estoppel, 439.

defence of former, 154.

proof of, 439.

publication of, 238.

Forms (Appendix), 546.

COPY,

of conviction, defendant's right to, 231.

not binding on justice, 234.

of warrant of commitment, prisoners entitled to, 231, n. (a).

distress, 428.

moving for *habeas corpus* on verified copy of conviction, 337.

certiorari on, 349, n. (x).

of conviction not to be returned to *certiorari*, 369.

where evidence by statute, 440.

of summons, sufficient to serve, 97.

of case granted by justices, sending to respondent, 324, 328.

CORONER can act as justice within his county, 52.

CORPORATE TOWN, exclusive jurisdiction in, 34.

CORROBORATIVE EVIDENCE, 134.

COSTS,

award of, on conviction, 227.

dismissal of complaint, 165, 167.

power of justices to award, *ib.*, 227.

where fine does not exceed 5s., 228.

of sum recoverable by summary order, 229.

to be specified in conviction, 228.

award of, at discretion of third person, bad, 228, 318.

COSTS—continued.

- levying by distress, 253.
- when to be excluded in calculating amount for appeal, 283, n. (k).
- upon hearing and determining appeal, 297, 307, 317.
- respiting appeal, 295.
- frivolous appeals, *ib.*
- amount to be specified in order of sessions, 318.
- on affirmance of conviction in queen's bench, 379.
- on case stated under 20 & 21 Vict. c. 43...331.
- liability of bail to, in court above, where principal dies before judgment, 379.
- taxation of, in queen's bench upon and subsequent to *certiorari*, *ib.*
- party not liable to, where *certiorari* is superseded *quia improvide emanavit*, 380.
- in actions against justices, 418.
- payable out of county fund, *ib.*
- on criminal information against justices, 45, 422.
- of opposing application for *habeas corpus*, 337.
- taxation of, a judicial act, 22, n. (m).
- of prosecution of indictable offences dealt with summarily, 493.

COTTON, trader in, where cannot act as justice, 51.

COUNSEL,

- as to right to act before magistrates, 77, 111, 394.
- application for *habeas corpus* should in general be made by, 337, n. (f).

COUNTERMAND of notice of appeal, 294, 319.

See ABANDONMENT.

COUNTY,

- jurisdiction of justice confined to county in and for which he acts, 18—23.
- where offender found, 28.
- justices residing in city which is county in itself, 23.
- justice for adjoining counties, *ib.*
- detached parts of, 28.
- queen's bench will take judicial notice of divisions of kingdom into counties, 195, 196.
- so of a city being a county of itself, 37, n. (o).
- and of petty sessional divisions of, 308.
- but not of the distance of places from each other in counties, 195, 196.
- in what, action to be laid against justices and constables, 402, 435.

COUNTY BRIDGE, presentment necessary before order for widening of, 53.

COUNTY COURT,

- justice not to be sued in, if he object thereto, 401.
- in what county court, if sued therein, 402.
- judge of, may be appointed a justice, 28.

COUNTY GAOL, commitment to, 267, n. (o).

COURT in which action to be brought, to be stated in notice of action, 411.

- summary jurisdiction court, how constituted, 110

COVERTURE. *See* FEME COVERT.

“CREDIBLE WITNESS,” when means competent, 120.

CREDIT of witness, justices sole judges of, 135.

CRIMINAL INFORMATION, 421.

See INFORMATION.

“CRIMINAL PROCEEDING,”

meaning of, 122—124, 341—346.

intent, when necessary, 159—161.

how affected by pendency of civil proceedings, 90, 157.

agreement between the parties, 162.

compounding, 55—57.

CROSS-EXAMINATION. *See* WITNESS.

CROSS-NOTICES OF APPEAL, 203.

CROWN,

when liable for costs, 331, *ib.*, n. (1).

remitting penalty on summary conviction, by pardon, 383.

See ATTORNEY-GENERAL.

CROWN OFFICE,

when *habeas corpus* issues from. *See* HABEAS CORPUS.

subpoena from, 584, 585.

CUMULATIVE remedy, 161, 207.

sentences, 486.

CUSTODY, charging defendant already in, 279.

CUSTOMS,

jurisdiction of justices, 33.

Summary Jurisdiction Acts extend to proceedings under statutes relating to, 507.

offence against, by married woman, 80, n. (i).

offences on the high seas, 31.

concurrent jurisdiction of county and local justices, *ib.*

party charged not competent witness, 123.

See SMUGGLING.

DAMAGES,

sustained by private individual, when may be subject of compromise, 55.

where to be assessed by justices, 57, 133, 225, 226.

by way of compensation, certain allegation and proof of the amount requisite, 133, 217.

in actions against justices, 416.

DATE,

impossible or incongruous, where may be rejected, 175.

of offence, 192, 131, n. (p).

of conviction, statement of, on record, 230.

of warrant, 269.

DEATH,

- of magistrate, 100.
- of party will not prevent hearing of appeal, *ib.*
- confirmation of conviction after, 379.
- proceedings for levying penalty after death of person entitled thereto, 383.

DEBTS recoverable summarily, 498.

DECLARATION of service of process, 501.

DECLINING JURISDICTION, 87.

DEER STEALING,

- conviction for, 130.
- claim of title, 146.
- several penalties for, 213.
 - though the act be joint, *ib.*
- certainty of judgment for, 216.
- distribution of penalty, 222.

DEFAULT OF APPEARANCE. *See* **APPEARANCE.**

DEFAULT OF DISTRESS. *See* **DISTRESS.**

DEFENCE,

- by the party accused, 145.
- by counsel or attorney, 77, 111.
- when defendant requires time, 112.
- justice bound to hear evidence in, 145.
- defendant giving evidence, 121, 122.
- matter of, 145—163.
- claim of right or authority, 145—152.
- former conviction for the same offence, 154.
- former acquittal, *ib.*
- mens rea*, 159.
- cumulative remedy, 161.
- agreement between parties, 162.

DEFENDANT. *See* **DEFENCE.**

DELEGATION of authority, 66, 319.

See **COSTS.**

DEMAND,

- when unnecessary previous to distress, 244.
- of warrant, 427.

DENIAL OF CHARGE, 117.

DEPOSIT instead of recognizance, 295.

DEPOSITIONS,

- bringing up by *certiorari*, 369, 370.
- must be taken in presence of justice, 84, 94, 103, n. (z).

DEPUTY,

- justice, cannot be in general appointed, 66.
- deputy recorder, *ib.*

DEPUTY—continued.

- justice, cannot be in general appointed—*continued*.
 - stipendiary magistrate, 66, n. (a).
 - constable, 248, n. (t).
- ministerial officer may appoint, 66.
- judicial officer may not, *ib*.
- interested, *ib*. n. (a).
- when not entitled to notice of action, 409.

DESERTED PREMISES, power to send constable to view, 39, n. (z).
See LANDLORD AND TENANT.

DETACHED parts of counties, justices acting for, 28.

DETAINER,

- on information, 86.
- without information, 395.
- wrongful, does not vitiate conviction, 86.
- upon an illegal arrest, 251.
- upon second warrant, 252.
- until return to distress warrant, 243, 251, 394.
- conviction for forcible, 144, 203.

DETENTION of goods, jurisdiction of justices in respect of, 57.

DIRECTION,

- of warrant, 247.
- of *certiorari*, 367.

“**DIRECTLY**,” 63, n. (k).

DIRECTORY words in a statute, 40, n. (d).

DISCHARGE,

- of defendant on recognizance, 106, 113.
 - on making satisfaction to prosecutor, 165.
 - on giving security, 200.
 - without punishment, 15, 165.
- of co-defendant, 121, n. (b).
- condition of defendant's, must be specified in commitment, 273.
- defendant entitled to, on payment of penalty, 280.
- on ground of defect in conviction, &c. *See* HABEAS CORPUS.

DISCRETIONARY POWER,

- limits of, 21, n. (m).
- no action for exercise of, 398.
- punishment, must be fixed, 203, 222.
- what judicial “discretion” is, 90, n. (h).

DISJUNCTIVE CONVICTION, 178.

DISMISSAL,

- of information, 165, 552.
- of appeal for informality, conclusive, 299, 305.
- certificate of, 166, 553.

DISPENSATION,

- of service of summons, 93, *ib*. n. (i).
- notice by justices of right of appeal, 293

DISQUALIFICATION,

of justices. *See* JUSTICES.
of witness. *See* WITNESS.

DISTANCE, mode of measuring, 24, n. (q), 27, n. (o).

DISTRESS, 243—257.

power to issue, derived from statute, 243.

when warrant for, should not issue without a previous summons or demand, 244.

without serving copy of minute of order, 244.

mandamus or rule to issue, *ib.* 245.

justices bound to issue, when, 21, n. (m).

suspended by appeal, 245.

oath, &c., for levy, 246.

warrant of, *ib.*

Forms of, *ib.* 553, 556.

must show jurisdiction, 247.

by whom issued, *ib.*

to whom directed, *ib.*

blanks in,

by whom executed, 247.

in what manner, 249.

showing warrant, 249.

breaking open outer doors, 250.

goods of feme covert, 250.

impounding goods on premises, *ib.*

in default of, in one jurisdiction, may be levied in another, 250.

offender may be committed until security given for appearance at the return of warrant, 251.

commitment in default of sufficient, *ib.*

commitment without issuing, *ib.*, 488.

tender or payment of penalty and expenses, 253.

replevin lies for, 254.

sale of, 255.

return to warrant of, 257.

constable refusing to return warrant of, *ib.*

where want of, must be alleged in warrant of commitment, 272.

drawing up good conviction after, 234.

sale under void warrant of, 249, n. (y).

See COMMITMENT—LANDLORD AND TENANT.

DISTRIBUTION OF PENALTY,

how awarded, 222.

where necessary to be awarded, 223.

DIVISION,

justices of a, 35, 41, 42.

when not necessary to state justices acting for, 41, 191.

when necessary to allege meeting held in and for, *ib.*, 41, n. (i), 42, n. (m), 191.

justice of adjoining, 23.

DOORS, breaking outer, 250.

DRAWING up conviction, 231.

‘DULY,’ effect of using this word, 177, n. (x)

DUPLICITY. *See* CERTAINTY AND INFORMATION.

DWELLING-HOUSE. *See* RESIDENCE.

EJUSDEM GENERIS, 315, n. (c).

ELEMENTARY EDUCATION ACT, 1876. *Forms* under, 593, 594.

ELY, justices of isle of, 37.

ENFORCING order of sessions, 320, 321.
recognizances, 241.

ENTERING and respiting appeal, 294, n. (c).

ENTIRETY,
of conviction, 170, 181, 379.
judgment, *ib.*
warrant, 237, 275.

ENTRY, conviction for forcible. *See* FORCIBLE ENTRY.

ERROR,
no writ of, lies on summary convictions, 349.

ESTOPPEL, when conviction is an, 154, 439.

ESTREAT. *See* RECOGNIZANCE.

EVIDENCE,
defendant requiring time to produce, 112.
variance between, and written proceedings, 86, 100, 106, 129, 131.
not stated in the conviction, 143.
to be given on oath, 125.
to be given in the defendant's presence, 124.
and in presence of justice, 125.
to be taken down in writing, 127.
of what facts proof must be given, 129.
offence within jurisdiction, *ib.*
place of offence, *ib.*
time of offence, 130.
must be prior to information, *ib.*
proof of allegation that fact was done between such and such a
time, *ib.*
objection thereto, 131.
variance as to time, *ib.*
facts constituting the offence, *ib.*
to negative exceptions, how far necessary, 132.
onus probandi lies on defendant, 133.
of specific quantity, &c., 133.
must be of offence in the information, 134.
corroborative, 134.
irrelevant, 144.
by declaration of service of process, handwriting, &c., 501.
justices judges of admissibility and effect of, 135—141.
proper to be left to a jury, sufficient for justices to act on, 135.
justices, in the place of a jury in this respect, *ib.*
justices conclusion from, decisive, if there be some evidence for their
consideration, *ib.*

EVIDENCE—*continued.*

- where superior court will judge of, 137.
 - guilty knowledge, when inferred from act of servant, *ib.*
 - the bare finding of smuggled spirits in a defendant's house, during his absence from home, not sufficient to convict, 138.
 - particular description of offender, proof of, 141.
 - what intendment admitted, *ib.*
 - fresh, may be heard on appeal, 305, 307.
 - of conviction or order, 306, 440.
 - of notice of appeal, 306.
 - of conviction in a collateral civil proceeding, 437, 438.
 - when an estoppel in a criminal proceeding, 439.
 - of declarations by constable before joint act of him and justice proved, 417.
 - of fact of imprisonment, 415.
 - of warrant, *ib.*
 - recital in warrant, *ib.*
 - of plaintiff's guilt, and that he underwent only legal punishment, 416.
 - of facts essential to jurisdiction, showing by affidavit that there was not, 74, n. (d), 373, 375.
 - in action against justices, 415.
 - of subsisting conviction, good on its face, 390, n. (x).
must agree with commitment, *ib.*
 - copy of conviction, 440, 232, n. (d).
 - certificate of dismissal of charge, 165, 167, 232, n. (d).
 - ambiguous finding in order, &c., not conclusive, 390, n. (x).
 - jurisdiction how far controvertible by, 373.
 - when necessary to show conviction has been quashed, 391.
when to show malice, 386.
 - of notice of action, &c., 406—414.
 - of time of commencement of action, 415.
 - that no summons issued, although recited, 99, n. (d).
- See WITNESS.*

EXAMINATION,

- of witnesses, must be taken formally in writing, 127.
 - must be on oath, 125.
 - in presence of defendant, 124.
of magistrate, 125.
 - returning to *certiorari*, 369, 370.
- See WITNESS.*

EXECUTION OF WARRANT, 277.**EXCEPTIONS. *See* EXEMPTIONS.****EXCESS OF PUNISHMENT, how far justice liable for, 392, 393.****EXCISE,**

- jurisdiction of justices in matters of, 32, 69.
- Summary Jurisdiction Acts extend to, 69, 507.

EXCLUSIVE LIBERTIES, 23, 34, 35.**EXECUTOR AND ADMINISTRATOR, *certiorari* may be directed to, when, 367.****EXEMPTIONS,**

- negative proof of, 132, 198.
- proof of, by defendant, 85, 132, 145.

EXEMPTIONS—*continued*.

- what necessary to be negatived, 85, 198.
- in information, 85.
- selling refreshments within prohibited hours, 132, n. (r).

EX PARTE PROCEEDINGS,

- application for order *ex parte*, 93.
- in default of appearance after summons, 107.

EXPENSES,

- of conveying defendant to prison, 279.
- of warrant, 273.

FACT,

- questions of, 88, 129, 312, 323, n. (a).
- mixed law and, 312.

“FACT COMMITTED,” effect of reckoning time from, 64.

FAIR. See **MARKET**.

FALSEHOOD of charge, jurisdiction of justice not affected by, 73.

FALSE IMPRISONMENT, time how reckoned for action for, 60, and *ib.*, n. (h).

FALSE RETURN. See **RETURN**.

FEEs,

- justices general power to remit, 228.
- where fine does not exceed 5s., 228.

“**FELONIOUSLY,**”

- when not necessary to allege act to have been done, 181, n. (n).

FEME COVERT,

- order for protection of property of deserted, 53, n. (s).
- order for judicial separation, 287.
- information for deserting, when laid, 66.
- may be convicted on a penal statute, 72.
- committal to prison for offence against the Customs Act, 80, n. (i).
- goods of a husband not liable to be distrained for penalties incurred by her, 250.
- may move for *habeas corpus* on behalf of husband, 337.
- when witness for or against husband, 121.

FIERI FACIAS, after affirmance of conviction in queen’s bench, 382.

FILING,

- conviction by justices of session, 237.
- return to *certiorari*, 369.

“**FINAL AND CONCLUSIVE,**”

- effect of these words on right of appeal, 284.
- on right to *certiorari*, 350, 351.

FINALITY of magistrates’ decision. See **CONCLUSIVENESS**.

FINES,

- levying, 257.
- disposition of, *ib.*
- commitment for non-payment of, 263.
- in lieu of imprisonment, 15, 221.
- minimum abolished, 15.
- payment by instalments, 15.
- See* PENALTY.

“FIRST DAY OF THE SESSIONS,” when notice of appeal to be give a certain time before, 289.

FISHERY,

- conviction for fishing in private, 77, 147.
- confession does not extend charge, if imperfectly stated, 116.
- claiming title, 147.
- salmon,
 - exporting, 132.
 - offence committed in river in two counties, 30.

‘FOR’ the county, &c., when these words necessary, 191.

FORCIBLE ENTRY AND DETAINER,

- must fix fine, 273.
- commitment for, *ib.*
- Summary Jurisdiction Acts do not extend to, 70.
- See* DETAINER.

FORFEITURE,

- time how reckoned when forfeiture incurred, 65.
- judgment of, necessary in record of conviction, 201.
- sale of, 262.
- See* FINES—PENALTIES.

FORM,

- statutory, 68, 173.
- where not sufficient to follow, 172—176.
- technical words not necessary in conviction, 179, 180.
- provision for want of, 174.
- appellant relying upon objections of, concluded, 301, 305.
- objections to matters of, to be stated at once on trial of appeal, 307.

FORMS of convictions, &c., (App.) 546—549.

FORMER CONVICTION OR ACQUITTAL,

- where defence, 154—159, 166.
- evidence of, *ib.*

“FORTHWITH,” effect of, in reckoning time, 63, 156, n. (*d*), 289.

“FOUND committing an offence,” 101, n. (*q*), 410, n. (*t*).

FRACTION of a day, when not considered, 64, n. (*n*), 288, n. (*b*).

FRAUD,

- habeas corpus* obtained by, 338.
- conviction obtained by, 354.

FRAUDULENT removal of goods. *See* LANDLORD AND TENANT.

"FRAUDULENTLY," allegation that act was done, 177.

FRESH grounds of appeal, delivery after adjournment, 294, 308.
evidence on hearing of appeal, 305.

FRIENDLY SOCIETY,
order of justices on officer of, 179.

FRIVOLOUS APPEALS, 295, 319.

"FROM," effect of reckoning time, 62.

"FROM COMMITTING THE OFFENCE," time, how reckoned, *ib.*

GAME,
information for trespass in search of, 148, 153.
need not be by party interested in the land or game, 78.
claiming title, 145—152.
several penalties included in one conviction, 207.
offences on different days, 208.
several on same day, 209.
single penalty for several acts, *ib.*
killing several hares in same day, incurs only one forfeiture, *ib.*
where joint penalty, 212.
where several penalties, 213.
application of penalty in convictions, 222, 223.

GAOL, COUNTY, commitment to, by justices of local jurisdiction, 267.

GAOLER, bound to discharge offender upon payment of penalty and costs, 280, 323.

GENERAL ISSUE,
plea of, by justices, 414.
by constables, 436.

"GENERAL QUARTER SESSIONS" mean the quarter sessions, 297.

GENERAL TERMS, "unlawfully," &c., 188, n. (n).

GENERAL WARRANTS, 433.

GOODS,
improperly detained, 57, 437.
See DISTRESS.

GREYHOUND,
several persons using, one offence, 212.
See GAME.

GROUND OF APPEAL, 308.

GUARDIANS, unnecessary to have consent of Board of, when, 80, n. (g).

GUERNSEY, Summary Jurisdiction Acts do not extend to, except as to backing warrants, 26.

HABEAS CORPUS,

removal of commitment by, 336—348.
 where the proper remedy, 336.
 out of what court it issues, *ib.*
 application for, at chambers, 336, n. (a).
 to colony or foreign dominion of the crown, *ib.*
 who may apply, 337.
 wife, *ib.*
 father, *ib.* and n. (f).
 how to apply, 337.
 affidavit, *ib.*
 copy of conviction, *ib.*
 dispensing with issuing of writ, 337, 339.
 and with bringing up prisoner, *ib.*
 costs of opposing application, 337.
 service of the writ, 337.
 objections to writ to be taken by substantive motion, 338.
 amending, 338, n. (p).
 return to, 339.
 court will not direct gaoler as to, *ib.*
 after return to, commitment cannot be amended, 347.
 but return may be amended, *ib.*
 in return to, court will intend nothing which ought to be made the subject of distinct and positive allegation, *ib.*
 return should show authority to commit, *ib.*
 if defect be not on face of commitment, a *certiorari* should issue to return the conviction, 347.
 when conviction should be brought before court, 337, 347.
 return to, must be certain, 340.
 if return shows one good cause of detention, and another bad, defendant may be remanded, 341.
 controverting truth of return to, on affidavit, *ib.*, 346.
 remedy for false return, 340, n. (f).
 appeal, 348.
 crown office rules relating to, 534.
Forms, 586—588.

HAND AND SEAL. *See* SIGNATURE AND SEAL.

HARD LABOUR, commitment with, 277.

HAWKER AND PEDIAR,

must be brought within description of the statute, 115, 141, 196.
 confession by, admits only the fact, not the law, 115.
 one act of trading not sufficient to constitute, 115.

HEARING,

what is a, 101, n. (n).
 by whom, 110.
 court an open and public one, *ib.*
 right of acting as advocate, 111.
 defendant requiring time, *ib.*
 adjournment, 113.
 confession, 114, 117.
 denial of charge, 117.

HEARING—continued.

- joint trial, 117.
 - examination of witnesses, 124.
 - the evidence required, 129.
 - the defence, 145.
 - evidence, &c., in reply, 164.
 - of second information before decision of first, 164.
 - dismissal of complaint, 165.
 - of appeal, 305.
- See* ADJOURNMENT.

HIGH SEAS, 29, 31.**HIGHWAY,**

- district, justices resident in places adjoining 24, n. (*p*).
- boundaries of parish extending to *medium filum* of, 31, n. (*f*).
- proceedings relating to stopping up or diversion of, 70, 309, n. (*m*).
- obstruction of, 148.
- highway or no highway, a question for the justices, *ib*.
- rate, enforcing payment of, 70.
- action for executing warrant against surveyor of, 398.
- conviction when an estoppel on an indictment for non-repair of, 439.

HOUSE OF CORRECTION, commitment to, 267.**HUSBAND, when competent witness for or against his wife, 121.**

See FEME COVERT.

“IMMEDIATE,” effect of in reckoning time, 63 and *ib*., n. (*k*), 289.**IMPERATIVE words in a statute, when, 40, n. (*d*).**

See DIRECTORY.

IMPERTINENT matter in return to *certiorari*, 370.**IMPLICATION, *certiorari* not taken away by, 350.****IMPRISONMENT,**

- where primary punishment, 263.
 - secondary to payment, *ib*.
 - for want of distress, 264.
 - fine in lieu of, 221.
 - if inflicted as an alternative punishment, commitment should notice the fact, 272.
 - time of, &c., 272.
 - discharge from, *ib*.
 - scale of, 276.
 - for consecutive terms, 269.
 - magistrate no right to imprison for breach of peace, unless in his view without first hearing charge, 396.
 - continuing cause of action, 65, n. (*l*), 404.
- And see* COMMITMENT.

“IN and for,” when necessary words, 191.**“IN or near,” the place where offence committed, 41, 42, 191.**

"IN pursuance of" a statute, 431.
 "execution of," *ib.*

INCLOSURE ACT,
 who may not act as justice under, 51.
 appeal against accounts of commissioners under, 284.

INDEMNITY OF JUSTICES, 27, n. (n), 87, n. (y).
See JUSTICES.

INDICTABLE OFFENCES, dealt with summarily, 15, 481—485, 492, 493, 548.

INDICTMENT against constable for not returning warrant, 257.

INDORSING
 warrant, 25, 26, 106, 248, 250.
 a ministerial act, 21, n. (m).

INDUSTRIAL SCHOOLS ACT, 1866.
Forms under, 591.

INFANT,
 may be convicted on a penal statute, if *doli capax*, 80.
 notice of action given on behalf of, 413, n. (q).

INFORMALITY, appeal dismissed for, conclusive, 299.

INFORMATION OR COMPLAINT,
 may be before one justice, 38, 77.
 foundation of proceedings, 72.
 not necessary where justice may convict on his own view, *ib.*
 defendant voluntarily appears without one, 92,
 n. (s).
 distinction between information and complaint, 73.
 effect of information in giving jurisdiction, *ib.*
 falsehood of charge does not affect jurisdiction, *ib.*
 adjudication limited by, *ib.*, 72, n. (t).
 when it must be received, 75.
 when it should be laid, 76.
 where it should be taken, 76.
 before whom, *ib.*, 18, 38, 76.
 by whom, 77.
 in matters relating to the inland revenue, *ib.*
 by party aggrieved, *ib.*
 by common informer, 78.
 by attorney-general, *ib.*
 by consent of a secretary of state, 79.
 by overseer, 80.
 under Smoke Nuisance Act, 79, n. (e).
 Town Police Act, *ib.*
 Lord's Day Act, *ib.*
 against whom, 80.
 feme covert, *ib.*
 infant, *ib.*
 master, for act of servant, *ib.*
 aiders and abettors, 81.
 owner of market, *ib.*, n. (m).

INFORMATION OR COMPLAINT—continued.

against whom—*continued.*

keeper of place of public resort, 81.

charter master of coal mine, *ib.*

shipowner, *ib.*

joint conviction, 81.

when necessary to be in writing, 82.

on oath, 83.

should be taken in presence of magistrate, 84.

to be for one offence only, *ib.*

negating exceptions, 85.

not recited in conviction, *ib.*

variance between, and evidence, 86.

detaining party charged, 86, 395.

justice bound to proceed on, 87.

declining jurisdiction, 87—90.

when the charge arises out of civil proceedings still pending, 90.

Forms of, 541.

INFORMATION, CRIMINAL,

against justices, for wrongful conviction, 44, 418—423, 531.

when to be moved for, 422.

when granted, 418.

costs on motion for, 422.

exculpatory affidavits of complainants on, 418.

justice must appear in person to receive judgment on, 423.

Forms, 581, 582.

INFORMER,

a competent witness, 121.

his share of penalties, 224.

crown remitting his share of penalty by pardon, 383.

See COMMON INFORMER.

INLAND REVENUE, proceedings relative to the. *See EXCISE.*

INSTALMENTS, justices' power to make penalty payable by, 15, 221, 266, 478.

INTENDMENT,

in aid of conviction, 178, 179, 185, 187.

not allowed to help out a defective return to *habeas corpus*, 340.

or a defective description of offence, 178, 179.

INTEREST,

justices disqualified by, 43—52, 322.

witness not disqualified by, 121.

IRELAND,

backing warrants in or for execution in, 25.

Summary Jurisdiction Acts do not extend to, in other respects, 69.

IRREGULAR PROCEEDINGS,

waiver of, 107.

IRRELEVANT EVIDENCE, justices have power to reject, 144.

ISSUING SUMMONS, 91.

JERSEY,

summary jurisdiction acts, do not extend to, except as to backing warrants, 26, 69.

JOINDER OF OFFENCES, 84.**JOINT CONVICTION** on joint information, 81, 216, 237.**JOINT NOTICE OF APPEAL** on separate convictions, 290.**JOINT OFFENDERS, 81, 208.****JOINT PENALTY, 212, 216.****JOINT TRIAL 117.**

discharge of one defendant so that he may be a witness, 121, n. (b).

JUDGE decides whether notice of action is necessary, 410.**JUDGMENT,**

party aggrieved by, 64.

meaning of, *ib.* 290, n. (f), 298, 310.

giving, 164, 199.

form of statement of, in record of conviction, 199.

must be warranted by premises, 199.

confined by information or complaint, 86.

no formal style necessary, 200.

of forfeiture necessary, 201.

though penalty be fixed by statute, 202.

where discretionary, 203.

including several penalties and offences in one judgment, 207.

several penalties may be included in one conviction, *ib.*

acts, *ib.*

offenders, 208.

offences on different days, *ib.*

on same day, 209.

single penalty for several acts, *ib.*

several offenders, 212.

where joint penalty, *ib.*

where several penalties, 213.

joint award of one fine against several defendants bad, 215.

form of, where two or more offences charged, 216.

bad for excess, 205.

for too little is as bad as judgment for too much, *ib.*

penalty must be certain 216.

what included in the judgment, 218

penalties by different statutes not to be mixed, *ib.*

time of fixing penalty not controvertible, 219.

how far entire, 221.

mitigation of penalty, 220.

dismissal of defendant without punishment, 199.

distribution of penalty, how awarded, 222.

where necessary, 223.

specification of party entitled to, *ib.*

informer's share, 224.

awarding costs, 227. *See Costs.*

costs at discretion of third person, bad, 228.

payment of amount of damage, 225.

JUDGMENT—*continued*.

- appeal from, how construed, 298.
- of sessions, may be altered during its continuance, 310.
- takes effect, when, *ib*.
- sessions not bound to give their reasons for, 316.
- appearing to receive, on criminal information, 423.
- See* ADJUDICATION.

JUDICIAL,

- and ministerial acts, 21, n. (*m*), 385, 386.
- discretion, what is, 90, n. (*h*).
- notice taken of known divisions of the kingdom, 195.
 - of certain cities being counties of themselves, 37, n. (*a*).
 - of petty sessional divisions of a county, 308.

JURISDICTION,

- of justices in general, 16—66. *See* JUSTICES.
- must be given by statute, 16.
- justices cannot give, by false finding, 152.
- cannot be delegated, 66, 228.
- limits of, 18—66.
- local extent of, 18—37.
- justices must appear to be acting in their jurisdiction as well as for it, 191.
- qualified, as to number and description of justices, 37.
- priority of, 53.
- conditions precedent to exercise of, *ib*.
- as to offence, 54.
- limitation as to amount, 57.
 - as to time, 58.
- must appear on face of proceedings, 33, 185, 186, n. (*z*), 129, 247, 427.
- ousted by claim of right or property, 145. *See* TITLE.
- objections which do not go to, 354, n. (*x*), 387.
- controverting by affidavit, 341, 347, 373.
- effect of information in giving, 73.
- declining, 87.
- action for acts of justices within, 385.
 - for acts without or in excess of, 390.
- of justices cannot be tried in action against constable alone, 427.
- witness out of. *See* WITNESS.

JURY

- trial before justices originally by, 3, 4.
- when trial before justices now by, 118.
- right of defendant to claim trial by, 15.
- justices in place of, as to effect of evidence, 135.
- bona fides* of justice, *semble* a question for the, 410.

JUS TERTII, claim of title founded on, 147.**JUSTICES OF THE PEACE,**

- origin and progress of the jurisdiction vested in, 1—15.
- appointment of, 2.
- qualification of, 26, 27.
- originally elected by the freeholders of the county, 2.
- assigned by commission, 1 Edw. 3, *ib*.
- first styled justices of the peace, 36 Edw. 3, *ib*.

JUSTICES OF THE PEACE—*continued.*

- power and duty of, originally only to preserve the peace, afterwards a power to proceed in sessions by inquest and verdict, 2, 3.
- earliest statute on which summary conviction, 33 Hen. 8, c. 6...10.
- exercise of this power general after the Restoration, 11.
- authority to "hear and determine," 3, 7, 8, 9.
- acting judicially are judges of record, 168, n. (b).
- changes affecting the power of summary fine or imprisonment, 11--15.
 1. right of appeal, 12, 13.
 2. taking away the writ of *certiorari*, 13.
 3. adoption of compendious forms, 13, 14
- of the summary jurisdiction in general of, 16--66.
 - founded on statutory authority, 16.
 - limits of, as to locality, 18--37.
 - residence, 18--28.
- of justice acting out of his county, &c., 19, 20.
- county justices residing in cities, &c. of exclusive jurisdiction, 23.
- acting for adjoining counties, 23.
- borough justices, 24.
- offences in workhouses of unions comprising parishes of two counties, 24.
- warrants executed on fresh pursuit, *ib.*
- backing warrants, 25.
- place of offence, 28--37.
 - offences within county, 28.
 - detached parts of counties, 28.
 - Railway, &c. Clauses Consolidation Acts, land in two jurisdictions, 30.
 - salmon fisheries, river between two counties, *ib.*
 - land between high and low water-mark of the sea, 31.
 - offender or goods in county where offence not committed, 32.
 - accessories, 34.
 - exclusive liberties, *ib.*, 35.
- as to number and description of justices, 37--53.
 - metropolitan police and stipendiary, 39.
 - concurrence of, *ib.*
 - justices in session originating convictions, 40.
 - "next justice," 41.
 - "in or near," *ib.*
 - of the division, *ib.*
 - quorum, 192.
 - disqualification by interest, 43--51, 322.
 - disqualification from other causes, 52.
- priority of jurisdiction, 53.
- conditions precedent to exercise of jurisdiction, *ib.*
- jurisdiction as to the offence, 54--57.
 - where property, &c., in question, 54.
 - compromise of offences, 55--57.
- limitation of authority as to amount, 57.
 - time, 58--66.
- delegation of authority, 66.
- qualification and oaths, 26.
 - acts done by unqualified justice, *ib.*
- ministerial acts of, 21, n. (m).
- judicial acts, *ib.*
- jurisdiction must appear on the face of their proceedings. 33, 34.

JUSTICES OF THE PEACE—*continued.*

- general effect of Summary Jurisdiction Acts on proceedings of, 67—71.
- may not act without complaint or information, 72.
 - unless empowered to convict on view, *ib.*
 - should be laid in their presence, 76, 84.
 - when bound to act, 75.
- declining jurisdiction, 87—90.
 - in general postpone criminal charges arising out of civil proceeding still pending, 90.
- issuing summons before warrant, 94.
- signing summons, 94.
- sufficiency of service, a question for, 99.
- warrant to enforce appearance, 103.
- detaining party charged, 106.
- appearance or default of defendant, 104.
- proceedings ex parte, 107.
- proceedings after appearance, 109—118.
- adjournment of, 106, 113.
- recognizance, 106.
- evidence, 129—144.
- compelling attendance of witnesses, 119.
- examination of, 124—128.
- sufficiency of evidence, a question for the justices, 134—140.
 - so credibility of witnesses, 135.
- are in the place of a jury, 135.
- jurisdiction ousted by claim of right, 145—152.
- objections not going to jurisdiction of, 354, n. (x).
- deciding without having been present during whole of hearing, *ib.*
- dismissal of complaint, 165—167.
- conviction, 168—238.
 - name and style of justices in, 190.
 - adjudication in, of punishment, 199—226.
 - of restitution of property, 226.
 - awarding costs, 227.
 - giving copy of, 231.
 - drawing up, 232—238.
 - amending, *ib.*
 - returning to sessions, 237.
- taking recognizance, 239.
- mitigating penalties, 220, 277.
- issuing warrant of distress, 243—257.
 - mandamus or rule to issue, 245.
 - detaining defendant until return of, 251.
- issuing warrant of commitment, 263—281.
 - style of justice in, 270.
- appeal, 282—322.
- informing defendant of right of appeal, 293.
- case stated under 20 & 21 Vict. c. 43...323—335.
- habeas corpus*, 336—348.
- certiorari*, 348—383.
- must obey writ of, 368.
- presumption in favour of regularity of proceeding of, 185.
- action against, 384.
- protection of, from vexatious actions, 11 & 12 Vict. c. 44...385.
- criminal information, 418.
 - must appear in person to receive judgment on, 423.
- attachment against, 44.
- duty in suppressing riots, 421, n. (z).
- See ACTION AGAINST.*

JUVENILE OFFENDERS. *See* LARCENY.

KNOWLEDGE,

averment of, when necessary, 132, 159, 160, 180, n. (n).
evidence of, what sufficient, 137, 138.
by justices of statute giving privilege, not necessary to entitle them
to notice of action, 410.
“knowingly,” 180.

LANCASTER, how to lay the venue in the county of, 402, n. (n).

LAND TAX, executing warrant for, 427, n. (j).

LANDS, in two counties, powers of justices as to, 29, 30, 32.

LANDS CLAUSES CONSOLIDATION ACT, proceedings by justices
under, 71, 76.
See COMPENSATION.

LANDLORD AND TENANT,

fraudulent removal of goods by tenant, 51, 78.
what justices disqualified from adjudicating on, 51.
complaint must be by landlord or his agent, 78.
deserted premises, proceedings relating to, 39, n. (z), 70.
recovery of premises on determination of tenancy, 401.

LARCENY,

statute 42 & 43 Vict. c. 49...482—485.
consent of accused to summary jurisdiction, *ib.*
prisoner pleading guilty, *ib.*
juvenile offenders, 481, 482.

LATIN, convictions formerly in, 168, n. (b).

LAW,

questions of, 88, 311.
mixed of, and fact, *ib.*

“LAWFUL, shall be,” “may be,” 41, n. (d).

LEVARI FACIAS, for penalty and costs on affirmance of conviction in
Queen's Bench, 382.

LEVY. *See* DISTRESS.

LIBEL, sureties in case of, 388.

LIBERTIES,

exclusive, 23, 34—37.

LICENCE,

granted by solicitor of excise, not a judicial act removable by *certiorari*,
349, n. (x).
certiorari, 349, n. (x).
not necessary to negative in evidence want of, 132.

LIMITATION OF AMOUNT, 57.

LIMITATION OF TIME,

for conviction, 58.
 for appeal, 298.
 as to action against justices, 402.
 constables, 424.

LOCALITY,

as affecting exercise of summary jurisdiction, 18—37.
See PLACE.

LONDON,

warrants of magistrates of the city of, 26.
 magistrates acting alone, 38, *ib.*, n. (r).

LORD'S DAY. *See* SUNDAY.**LUNATICS,**

Summary Jurisdiction Acts do not extend to orders respecting, 69.

MAGISTRATE. *See* JUSTICES.**MALICE,**

when essential for action against magistrate, 386.
 want of probable cause also, must be proved in action against justices acting within jurisdiction, *ib.*

“MALICIOUSLY,”

effect of alleging act to have been done, 181, n. (n).
 when necessary to allege in notice of action that act was done, 411.

MALT, conviction for wetting, 142.**MAN. ISLE OF,**

Summary Jurisdiction Acts do not extend to, except as to backing warrants, 26, 69.

MANDAMUS,

lies to compel justices to receive complaint, 532.
 issue summons, 94.
 proceed to a determination, 87—90.
 issue warrant of distress, 245.
 when not, 400.
 issue warrant of commitment, 280.
 to state a case, 335.
 hear appeal, 284, n. (l).
 costs of, 89, n. (c).
 does not lie to compel sessions to rehear an appeal which they have already heard, 310.
 nor to grant a case, 317.
 lies to compel sessions to issue process to enforce order of court, 321.
 does not lie to compel sessions to receive evidence which they deem inadmissible, 317.
 does not lie to compel sessions to hear an original complaint against turnpike trustees, after a long lapse of time, *ib.*
 or to give their reasons for their judgment, or make special entries on the records, 284, n. (l).
 Forms, 582, 583.
See RULE.

MARKET,

who to be informers for offences against Market Act, 77, n. (n).
owner of, when liable for nuisance therein, 81, n. (m).

MARRIED WOMAN. *See FEME COVERT.*

MASTER,

acting as justice in his own case, 44.
where responsible for act of servant, 72, 140.

MASTER AND SERVANT,

conviction of infant, 80.
conviction for absenting from service, *ib.*, 204.
showing by affidavit, no evidence of contract to serve, 347.

" MATTER OF COMPLAINT," 65.

" MAY BE LAWFUL," 40, n. (d).

MENS REA, 159.

MERCHANT SEAMEN'S ACT. *See SHIPS.*

MERGER of offence in a higher one, 75.

METROPOLITAN BUILDING ACT,

enforcing order under, 22, n. (m).

METROPOLITAN POLICE MAGISTRATES,

do not require qualification by estate, 27.
warrants of, may be executed in any part of kingdom without being
backed, 26.
acting alone, 39.
inquiry into claim of right to take goods, 145, n. (i).
protection of magistrates and constables under, 403, n. (p).

MINE,

charter-master violating rules of, 81, n. (m).

MINIMUM FINE abolished, 15.

MINISTERIAL AND JUDICIAL ACTS OF JUSTICES, 21, n. (m),
385, 386.

MITIGATING penalty, 220, 221.
punishment, 277.

MODERN REPORTS, observations on, 204, n. (y).

MONEY, paying into court, after action brought against justices, 405.

" MONTH," 61, 62.

MUNICIPAL CORPORATIONS ACT,

who may not act as a justice, 51.
levying fines under, 258.
See BOROUGH.

NAME,

- and style of justice in conviction, 190—192.
 - in warrant, 269, 270.
 - in return to *certiorari*, 369.
 - habeas corpus*, 340, 377, n. (k)
- of defendant, 189, 269.
 - when unknown, 190.
- of party aggrieved, *ib.*
 - when unknown, *ib.*

NAVAL STORES,
marking, 132.

“NEAR” place of offence, justice residing, 41, 42.

NEGATIVE, proof of. *See* EVIDENCE.

NEGATIVING,
exemptions. *See* EXEMPTIONS.

“NEIGHBOURING JUSTICE,” 41, n. (g).

NEXT JUSTICE,
sole authority of, 41.
where must be so described, 41, 191.

“NEXT SESSIONS,”
appeal to, 298.
when directory only, 238.

NON-APPEARANCE. *See* APPEARANCE.

NONFEASANCE, notice of action for, 411, n. (z).

NON INTROMITTANT, clause of, in charter of borough, 35.

NOTICE,
of appeal, 287. *See* APPEAL.
of case granted by justices, 324.
by justices of right of appeal, 293.
of trial of appeal, 294.
to produce, 306.
as to *certiorari*, requisites of, 362—365.
computation of time as to, *ib.*
of action against justices, 404
when necessary, 406.
how time of, is reckoned, *ib.*
form of, 411.
by whom to be given, 412.
of motion for criminal information, 422.

NUISANCES PREVENTION AND REMOVAL ACT.
cause and effect of nuisance must both exist within area of local
jurisdiction, 28, n. (r).
what justices may act under, 49.

NUMBER of justices requisite to act, 37. *See* JUSTICES.

NUNC PRO TUNC, *mandamus* commanding justices to do an act, 317, n. (p).

OATH,

to be taken by justices, 26.
justice refusing to administer, 76, n. (o).
warrant not void if oaths by justice not taken, 27, 389.
information, when necessary to be on, 83.
to be administered before evidence taken, *ib.*
in presence of justice, 84, 103.
when to be stated in warrant, 103, n. (z), 105.
witnesses must be examined on, 125.
where necessary for levying penalty, 246.

OATHS,

swearing profane, conviction for, 84.
See PROFANE SWEARING.

OBJECTIONS. *See* CERTIORARI and WAIVER.

“OCCASIONAL COURT HOUSE,” 111.

OFFENCE,

what, cognizable summarily, 16.
proof of, 129—135.
strictness in describing, 196—198.
description of, must be certain, *ib.*

OFFENDER,

name of, 189.
liability of, to several penalties, 209, 212.
where several, whether distinct penalties can be awarded against each, 212.

OFFICER. *See* CONSTABLE.

ONUS PROBANDI, where it lies on the defendant, 132, 145.

“OPEN COURT,” 111.

OPINION of Judges of Assize, justices adjourning case for, 303.

ORDER OF JUSTICES,

distinction between, and conviction, 168—173.
includes conviction, when, 310.
need not now be drawn up before it is acted upon, 170, n. (i), 171, 237, 245.
made when pronounced verbally, 232.
may be good in part, 171.
copy of minute of, to be served before distress, &c., 244, 245.
amendment of, 237.
of detention may be verbal, 268.
objecting to, 355.
enforcing, 320, 321, 355.
removing by *certiorari*, 363.
summary, 497.
See SESSIONS, QUARTER.

OVERSEERS,

- complaint by, may be made by one on behalf of the other, 80.
- service of notice of appeal on, 290.
- conviction of, for not delivering over bastardy ledger, 205, 274.

OWNER,

- complaint by, where necessary, 77.
- where it must so appear in conviction, *ib.*

OWNERSHIP OF PROPERTY, how described, 190.

OXFORD, commitment by Vice-Chancellor of, 274.

PACEM, CONTRA, averment of, unnecessary, 180.

PAPER, convictions may be on, 169, n. (*b*).

PARCHMENT,

- convictions formerly on, 169, n. (*b*).
- return to *certiorari* on, 369.

PARDON, crown remitting summary convictions by, 383.

PARISH,

- boundaries of, 31, n. (*f*).
- certiorari* obtained on behalf of, 365.
- appeal by, 290.

PARK, breaking and entering. *See* DEER STEALING.

PAROL. *See* VERBAL.

PARTNERS, describing, in conviction, 190.

“PARTY AGGRIEVED,” 78.

PAST TENSE, conviction in, 176.

PAYING MONEY INTO COURT, 405.

PAYMENT,

- of penalty and expenses stays execution of writ of distress, 253.
- to gaoler entitles defendant to his discharge, *ib.*, 280.
- when to be made, *ib.*, 280.
- by instalment, 221.

PEACE. *See* CLERK OF THE.

- justice binding over to keep the, 240, 260.
- convicting of assault on application for sureties to keep the, 70.
- no right to imprison for breach of, unless in their view, without first hearing charge, 396.

PENAL STATUTES. *See* STATUTES.

PENALTIES,

- fixing, 222.
- adjudication of, must be expressed, *ib.*

PENALTIES—continued.

- must be certain, 223.
 - periods of imprisonment for non-payment of small, 276.
 - several distinct, when included in one conviction, 207.
 - how to ascertain whether distinct penalties to be awarded, *ib.*
 - several acts, *ib.*
 - several offenders, *ib.*, 208, 212.
 - offences committed on several days, *ib.*
 - on same day, 209.
 - where single, for several acts on the same day, 209.
 - where several penalties incurred on the same day, 213.
 - to whom paid, 291, n. (i).
 - where joint penalty, 212.
 - where several penalties, 213.
 - joint award of one penalty against several defendants bad, 216.
 - by different statutes not to be mixed, 218.
 - time of fixing, not controvertible, 219.
 - mitigation of, 220.
 - mitigated, *ib.*
 - distribution of, 222.
 - where unnecessary to award distribution of, 223.
 - specification of party entitled to, *ib.*
 - informer's share of, 224.
 - levying by distress, 243.
 - oath, where necessary before levying, 246.
 - tender of, and of expenses, discharges commitment or distress, 253, 280.
 - receipt by constable or gaoler, 261.
 - recovery of, after affirmance of conviction, 381.
 - after death of party, 379.
 - remitted by pardon, 383.
 - recovering back, in actions against justices, 416, n. (n).
- See FINES—JUDGMENT.*

PERSONAL,

- service of notice, 88.
 - summons, 96.
- appearance of appellant and respondent, when necessary, 305, n. (t).
- appearance of defendant to receive judgment on criminal information, 423.

PETTY SESSIONS,

- a meeting of two justices in one place for business constitutes, 43, and *ib.* n. (q).
- petty sessional divisions, 41, 42.
- describing, in commitment, 43, n. (q).

PLACE,

- limits exercise of jurisdiction of justices, 18, 190.
- justices must appear to be acting in their jurisdiction, *ib.*
- of offence, jurisdiction affected by, 28.
- proof of, 129.
- variance between evidence and information as to, *ib.*
- of conviction, 188.
- to be charged as well as proved, 129, 194—197.
- of imprisonment, &c. to be stated in notice of action, 412.
- of hearing appeal, 297.

PLEA,

- of conviction in bar to action, 386, 437.
- to conviction, 349.
- to return to *habeas corpus*, 341.
- of general issue by justices and officers, 414, 424.

POACHING. *See* GAME.

POOR,

- distribution of penalty, 222.
- levying contribution under order of poor law commissioners, 394.
- See* REMOVAL.

POOR-RATE,

- allowance of, a ministerial act, 22, n. (*m*).
- proceedings for enforcing payment of, 22, n. (*m*), 70, 394.
- magistrate not liable for defect in, 398.

POSITIVE, charge must be, 197.

POSSESSION of goods, order of justices divesting, 437.

POST-OFFICE,

- Summary Jurisdiction Acts extend to proceedings under statutes relating to, 69, 507.
- sending notice of appeal through, 292.
- notices by, *ib*.

POSTPONEMENT,

- of issuing warrant of distress, 244.
- warrant of commitment, 267.

PRACTICE,

- on hearing appeals, 297—322.
- as to drawing up conviction, 232.

PRESENTMENT,

- by justices, 72, n. (*t*).
- by commissioners of sewers, *ib*.

PRESENT TENSE, judgment must be stated in, 176.

PRESUMPTION,

- how far made in favour of conviction, 178, 179, 185—187.
- of jurisdiction, may not be, *ib*.
- of regularity of proceedings, *ib*.
- of guilty knowledge, 81.

PRINTER,

- omission of name of, from books, information to be by Attorney or Solicitor-General, 79.

PRIORITY of jurisdiction, 53.

PRISONER,

- in custody on criminal process, cannot be charged on civil process, whilst in same custody, 279.
- but if in execution on civil process, he may be charged criminally whilst in such custody, *ib*.

- PRIVATE HEARING, when not to be, 111.
- PROBABLE CAUSE, want of, as well as malice, must be proved in action against justices, for acts within jurisdiction, 386.
- PROBATION, release upon, 166.
- PROCEDENDO, issuing of, where *certiorari* improperly granted, 370, 371, 382.
- PROFANE SWEARING,
oaths and curses must be specified, 81.
penalty for, 207, 211.
- PROHIBITION, on suggestion of title, 153.
writ of, 534, 583.
- PROOFS necessary to support charge, 129.
- PROPERTY. *See* TITLE.
- PROSECUTOR, *certiorari* not taken away from, 353.
- PROTECTION of officer executing warrant, 249.
- PUBLIC,
proceedings to be, 111.
- PUBLIC HEALTH ACT, 1875,
decision of local authority, when not reviewable by justices, 21, n. (*m*).
justices, although members of the local authority, may act, 49.
cause and effect of nuisance must both exist within area of local jurisdiction, 28, n. (*r*).
what justices may act under, 49.
- PUBLIC RESORT, keeper of place of, when responsible for acts of servant, 81, n. (*m*).
- PUBLIC WORKS CONSOLIDATION ACTS, proceedings of justices under, 51.
- PUBLICATION OF CONVICTIONS, 238.
- PUNISHMENT,
discretionary, must be fixed in adjudication, 203, 221.
must be precise and certain, *ib*.
discharging accused without, 15.
- PURSUIT, warrant executed on fresh, 24.
- QUALIFICATION,
of justices, 26, 27.
want of, in justices, does not render their acts wholly void, 26.
See EXEMPTIONS.

QUANTITY,

where necessary to allege, 133.
proof of, *ib.*

QUASHING. *See* CONVICTION—CERTIORARI.

RAILWAY,

shareholder should not act as justice, in enforcing bye-laws of, 49, 51.
land taken, &c. in two counties, 30.
adjudication by justices of compensation to be paid by railway company for having injuriously affected lands, is not an order within 11 & 12 Vict. c. 43...70.
conviction for sending dangerous goods by, 81, n. (m), 160.
See COMPENSATION.

RATE,

disputing validity of, 152, and *ib.* n. (j), 153.
duty of justice in enforcing payment of, 21, n. (m).
commitment for nonpayment of, 275.
made without jurisdiction, 282, n. (d).

“REASONABLE,”

belief, 409.
cause. *See* PROBABLE CAUSE.

RECITAL,

information in warrant, 416.
of title of statute, 176, and *ib.* n. (r).

RECOGNIZANCE,

on adjournment, 106, 114.
until return of warrant, 239.
against future offence, *ib.*
to keep the peace, 240, 241, 551.
duty of justices as to, 239—242.
of sheriff, on levying, 259—261.
power of sessions to discharge, 260.
 estreat, 259.
rights and duties of clerk of the peace respecting, 242.
to prosecute appeal. *See* APPEAL.
for quarter sessions case, 316.
entering into, for *certiorari*, 365, 366.
proceedings on, for costs on *certiorari*, *ib.* 380.
scire facias on forfeiture of, 259, n. (l), 380.
attachment, 380.
taking, when a judicial act, 21, n. (m).
taken out of court, 242.
Form of proceedings, 561.
See COMMITMENT—DISTRESS.

RECORD,

conviction is matter of, 168.
mandamus does not lie to sessions to make special entries on, 316.
magistrates acting judicially are judges of, 168, n. (b).

RECORDER OF BOROUGH, deputy, 66, n. (a).

RECOVERY OF CIVIL DEBTS, 498.

REFORMATORY SCHOOLS ACT, 1866.

Forms under, 589.

REGISTER OF CONVICTIONS AND ORDERS, 232, 489.

REGULARITY of proceedings, how far presumed. *See* PRESUMPTION.

REHEARING of appeal at sessions, not allowed, unless case reserved, 310.

RELEASE on tender of penalty, 253, 280, 356.
upon probation, 166.

REMAND, 113.

REMITTING PENALTIES,
crown has power of, 383.

REMOVAL,
of the poor, Summary Jurisdiction Acts, do not extend to warrants
and orders for, 69
but it does to order for costs of maintenance consequent on
order of removal, *ib. n. (z)*.
See CERTIORARI.

RENT. *See* LANDLORD AND TENANT.

REPLEVIN,
lies upon a distress for penalties, 254, 255.
when it does not lie, 282, n. (a).
notice of action, 425, n. (e).
demand of warrant, 427.

REPLY,
evidence in, 164, 307.
observations in, 164, 307.

RES JUDICATA,
defence of, 154, 437.
when to be raised, 361.

RESERVING special case on conviction, 314.

RESIDENCE,
of justices, limits of jurisdiction as to, 18—28.
leaving notice of appeal at, 292.
See ABODE.

RESPITING APPEAL, 294.
See APPEAL.

RESPONDENT not appearing in support of conviction at sessions,
307, n. (d).

RESTITUTION of property, in certain cases of larceny, 226.

RE-SWEARING of witness, when necessary, 125, 128, n. (e).

RETURN,

of conviction to sessions, 237, 169, *ib.* n. (e).

of warrant, 105, 257.

of property taken from prisoner, 503.

requisites of, to *habeas corpus*, 339. *See* **HABEAS CORPUS.**

ambiguous, 340.

to *certiorari*, 369. *See* **CERTIORARI.**

false, 341.

controverting, *ib.*

RETURN-DAY, warrant of execution in force till, 105, 247, 257.

RIGHT. *See* **TITLE.**

RIOT,

duty of justices in case of, 421, n. (z).

charge of, cannot be compounded, 55.

RIVER,

running between two counties, power of justices over offences upon, 29.

boundaries of parishes extending to *medium filum* of, 31, n. (f).

RULE,

calling on magistrates to proceed, &c., under 11 & 12 Vict. c. 44, s. 5... 75. *See* **MANDAMUS.**

no action lies for obeying, 75, 398.

for *habeas corpus*, 336.

for *certiorari*, 359.

SALE,

by servant, when evidence against master. *See* **MASTER.**

by feme covert. *See* **FEME COVERT.**

several acts of, in one day, when single offence, 209.

when several offences, *ib.*

of goods distrained, 255.

time for, *ib.*

of forfeitures, 262.

under void warrant, 249, n. (y), 320, n. (l).

SALMON FISHERIES. *See* **FISHERY.**

SALVAGE, jurisdiction of justices in respect of, 57.

SARK, Summary Jurisdiction Acts do not extend to, except as to backing warrants, 26.

SATISFACTION to prosecutor, discharge of defendant on making, 165.

SCALE OF IMPRISONMENT, 276.

SCIENTER. *See* **KNOWLEDGE.**

SCIRE FACIAS, for costs on conviction, 382, 383.

SCOTLAND,

backing warrants in, or for execution in, 25.

service of process in, 513.

Summary Jurisdiction Acts do not extend to, in other respects, 69.

SEA,

offence committed at, or on sea coast, 29, 30, 31.

between high and low water-mark, *ib.*

See CUSTOMS.

SEAL.

justices', to conviction, 169, 229, *ib.* n. (b), 268.

warrant, 247, 268.

return to *certiorari*, 169, n. (e), 235, n. (p), 369.

See SIGNATURE.

SEARCH WARRANT. *See* WARRANT.

SECOND,

hearing, 310

application for summons, 60, 96, n. (o).

conviction, 154, n. (z).

arrest, 281.

notice of appeal, 294, *ib.* n. (c), 301.

appeal, 299.

SECURITY,

taken for payment of fine, 15, 221, 563, 564.

SEPARATE,

convictions, 81, 118, 236, n. (y).

jurisdiction, 34.

penalties, 213—216.

SERVANT. *See* MASTER.

SERVICE OF NOTICE OF APPEAL, 292.

SERVICE OF PROCESS, proof of, 100.

SERVICE OF SUMMONS,

when must be personal, 96.

leaving at house sufficient, 97.

delivery of *copy* sufficient, *ib.*

in Scotland, 97.

by whom served, 513, 98.

when served, 99.

justices to judge as to sufficiency of, 99.

when court will interfere as to, 100.

not stated in conviction, *ib.*

proof of, 91, 100.

SESSIONS, QUARTER,

how held formerly, 3—7.

power of, to originate convictions, 40.

procedure at, 12 & 13 Vict. c. 45, (App.) 467—72.

convictions to be filed at, 237.

appeal to, where it lies, 282.

SESSIONS, QUARTER—*continued*.

- to determine what is reasonable notice of appeal, 308, 309.
- next*, meaning of, 298.
- decision of, upon formal objection, conclusive, 299.
- may adjourn appeal on the ground of surprise, 302.
- may adjourn to a subsequent sessions, if appeal be properly lodged, but not where the appeal has been irregularly entered, 303.
- adjournment for opinion of judges of assize, *ib*.
- can only notice conviction returned by justices, 305.
- practice at, on hearing appeal, 306.
- personal appearance of appellant and respondent at, 305, n. (t).
- may alter judgment during continuance of, 310.
- may receive fresh evidence on hearing of appeal, 305.
- may require all formal objections to be stated at once, 307.
- hearing of merits, *ib*.
- decision of, upon merits, conclusive, though erroneous, unless case reserved, 310.
- upon sufficiency of notice and grounds of appeal and amendment conclusive, 309, 310.
- not bound to give reasons for decision, or make special entries, 316.
- practice at, conclusive, unless manifestly unjust, *ib*.
- power of, to give costs, 317.
- may reserve special case, 314.
- order of, enforcing, 320, 355.
 - objections to, *ib*.
 - removal of, 363.
 - quashed if it confirm order made by justices disqualified on account of interest, 44, n. (y).
- certiorari* to, 367.

See APPEAL—PETTY SESSIONS.

SEVERAL DEFENDANTS,

- several offences, 209—216.
- penalties, *ib*.

See JOINT OFFENDERS.

SEWERS RATE, 72, n. (t).**“SHALL BE LAWFUL,” 40, n. (d).****SHERIFF,**

- interested, invalidates acts of under-sheriff, 44, n. (y).
- justice who is sheriff cannot act as justice during his shrievalty, 52.
- duty of, in levying fines, 260, 261.

SHIPS AND SHIPPING,

- owner of vessel convicted for obstructing navigable river, 81, n. (m).
- jurisdiction under Merchant Seamen's Act, 32.
- as to salvage, property saved not exceeding 1,000*l*...57.

SHOWING WARRANT, 250, 278.**SIGNATURE,**

- justices', to conviction, 229, n. (b).
- summons, 94.
- warrant before conviction, 104.
- of execution, 246, n. (z), 268.

SIGNATURE—*continued*.

justices', to notice of appeal, 292.
 certiorari, 365.
 return to *certiorari*, 369.

See SEAL.

SMUGGLING,

detaining party charged with, 86.
conviction for unshipping tobacco, liable to forfeiture, 122, 123.
for concealing tea unlawfully imported, 137.
 spirits, 138.
returning depositions to *certiorari*, 370.
the bare finding of smuggled spirits in defendant's house, during his
 absence, not sufficient to convict, 139.
conviction for being found within a certain distance of the coast,
 340, n. (i).
two causes of detention, 341.
affidavit controverting the truth of return to *habeas corpus*, 341, 342.
See CUSTOMS.

SOLICITOR,

right to act as advocate, 111.

SPECIAL CASE. See CASE.

SPIRITS. See SMUGGLING.

STAFFORDSHIRE SESSIONS, practice on appeals at, 307, n. (c).

STAMPS,

Summary Jurisdiction Acts extend to proceedings under statutes
relating to, 69.

STATUTE, general issue by, 414, 424.

STATUTES,

“month” in, means in general calendar month, 61.
authority given by, to justices, 16.
construction of penal, 190—199.
how construed as to justices' authority, 16.
effect of partial repeal of, 79, n. (d).
how construed as to taking away *certiorari*, 350—360.
Summary Jurisdiction Acts, general effect of, 67—71.
 provisions of, (App.) 441—516.
 Schedule to, *ib.* 539.

STATUTI, CONTRA FORMAM, does not help, 177.

STATUTORY FORMS. See FORM.

STIPENDIARY MAGISTRATE, 24, n. (g), 39, 66, n. (a).

STYLE,

of justices in conviction, 190.

SUBPŒNA AD TESTIFICANDUM, 119.

duces tecum, 119, 306.
Forms of writs of, 584, 585.

SUBSTITUTION OF GOOD FOR BAD conviction, 234.
warrant, 233, n. (f), 271.

SUMMARY ORDERS, 497, 550.

SUMMONS,

where necessary to be issued, 91.
before warrant, 21, n. (m), 94, 103.
compelling the issuing of, 94.
when to be issued, 96.
second, *ib.*, n. (o).
dispensation of, by statute, 93.
not necessary where application for order *ex parte*, 93.
defendant appears without one, 92, n. (s), 109.
form of, 95.
limits adjudication, 73, 74.
service of, 96.
question of due service is for the justices, 99.
service on wrong person, *ib.*, n. (c).
of witnesses, 119.
irregularity in, cured by appearance, 109.
absence of, altogether, cured by appearance, *ib.*
not stated in conviction, 100.
not objectionable for defect in substance or in form, or for variance,
100.
withdrawal of, 100.
Forms of, 541.

SUNDAY,

when reckoned in calculation of time, 63, 290, 327.
service of notice of appeal on, 290.
trading on, incurs only one penalty, 210.
warrant in execution for penalty, cannot be executed on, 278.

SUPERSEDEAS,

certiorari operates as from the time of its delivery to the justices
below, 368.
of *certiorari*, *quia improvidè emanavit*, exempts party from costs, 380.

SURETIES,

for keeping the peace, 240, 241.
for good behaviour, 240, n. (c).

SURPLUSAGE,

does not vitiate, 175, 291.
date rejected as impossible, 175.
charge of fact, not penal, rejected as, *ib.*

SURPRISE, adjournment on account of, 302.

SUSPENSION,

of issuing of summons, 60, n. (y), 96.
of execution by appeal, 245, 285.
certiorari, 368, 371.
of *certiorari* by appeal, 359.
of warrant, 244, 267.

SWEARING See OATH—PROFANE SWEARING.

TAKING FISH. *See* FISHERY.

TAXES,

Summary Jurisdiction Acts extend to proceedings under statutes relating to, 69.

TEA. *See* SMUGGLING.

TECHNICAL WORDS, 179.

TENDER,

of penalty and expenses prevents execution of distress warrant, 253.
discharges commitment, 253, 280.

to whom to be made, 253, 280.

action for detention after, *ib.*

of amends, 405.

TENEMENTS, warrant for delivering possession of, under 1 & 2 Vict. c. 74...401.

TERMS, "no action to be brought," 384, n. (a).

TIME,

defendant requiring. *See* ADJOURNMENT.

limitation of, as to prosecution, 58.

how reckoned, 62.

for laying information, 60.

of offence, how alleged in conviction, 130, 192—194.

between such a day and such a day, *ib.*

of offence, evidence of, 130.

variance as to, between evidence and information, 131.

must be prior to information, *ib.*

when not granted for controverting return to *habeas corpus*, 344, n. (y).

for suing out *certiorari*, 299, 361.

for transmitting case, &c., under 20 & 21 Vict. c. 43...326.

of imprisonment, must appear in warrant of commitment, 272.

limitation of, as to right of appeal, 297.

in actions against magistrates, 402.

constables, 424.

calculation of, in notice of action, 406.

See JUSTICES.

TITLE,

claim to, ousts jurisdiction of justices, 145.

under Malicious Trespass Act, 145, n. (i).

Metropolitan Police Act, 146, n. (i).

on charge of fraudulently removing goods, 146, n. (i).

colour of, 146.

claim must be on reasonable ground, 147.

and *bonâ fide*, *ib.*

and one that can legally exist, *ib.*

must be on behalf of defendant, not a *jus tertii*, *ib.*

when to be made, 153.

TOWN-POLICE ACT, information under, 79, n. (e).

TRADE, exercising on Sunday. *See* SUNDAY.

TRADE MARKS,

civil and criminal proceedings may be concurrent for infringing, 158.

“TRAVELLERS,” supplying with refreshment, 132, n. (r).

TREES, information for stealing growing, need not be at suit of owner,

78, *ib.*, n. (b).

when conviction for stealing, a bar to an action for, 78, n. (b).

claim of title, 149.

TRESPASS. See ACTION—GAME—MALICE.

TRIFLING, offence too, for conviction, 165—167.

TRUCK ACT,

offence under, commenced in one county, completed in another,
28, n. (r).

who may not act as justice under, 51.

certiorari to remove proceedings under, 351.

UNCERTAINTY,

conviction bad for, 197.

good ground of objection to a return to *habeas corpus*, 341.

UNION,

comprising parishes of several counties, offences committed in work-
houses of, 24.

“UNLAWFULLY,”

where this allegation unnecessary, 180, and *ib.* n. (n).

effect of alleging act to have been done, 177.

UNLAWFULNESS, not to be intended. See PRESUMPTION.

VACCINATION, 154, n. (z), 209, n. (n).

VARIANCE,

between evidence and information, &c., 86, 100, 106, 129, 134.

conviction and copy. See CONVICTION.

conviction and warrant, *ib.*

certiorari and conviction returned, 371.

VENUE,

in action against magistrates, 402.

against constables, 424.

VERBAL,

adjudication, when sufficient, 169, n. (c), 229, n. (b), 299.

See WRITING.

VIEW

conviction on, 6, 72, *ib.*, n. (u), 144.

VIRTUTE OFFICII, 431, n. (g), 435.

VOID,

when acts of justices are, and when only voidable, 426.
 not for want of having taken the oaths, 26.
 not for want of qualification, 26.
 warrant, sale under, 249, n. (y).

WAIVER,

of objection by appearance, 107, 109. *See* APPEARANCE.
 by entering on merits of case, *ib.*
 to justice being interested, 44, n. (y), 49.
 cannot be to arrest on Sunday, 278, n. (z).

WARRANT,

issuing, when a judicial, and when a ministerial act, 2, n. (m).
 when justices bound to issue, *ib.*
 by whom issued, 247.
 when summons necessary before issuing, *ib.*, 101.
 when not, 101—103.
 on certificate of clerk of the peace, 103.
 for apprehension of defendant to answer information, &c., 101, 102.
 form of, 104.
 not reciting order or disobedience thereof, 387.
 when executed, 105.
 not open to objection, 106.
 effect of variance between evidence and, *ib.*
 protection of justice issuing, 106.
 against witness, 119.
 warrant for delivering possession of tenements, where tenancy determined, 70, 401.
 arrest without, 102.
 requisites of, for levying penalty, 243.
 to whom to be directed, 247.
 in what manner to be executed, 249.
 indorsement of, 25.
 a ministerial act, 21, n. (m).
 on fresh pursuit, 25.
 of distress, constable's duty in returning, 257.
 who liable, when granted on a defective conviction, 397.
 bad in part, when bad for the whole, 275.
 bad for uncertainty, 270.
 execution of warrants of commitment, 277.
 may be executed anywhere within the justices' jurisdiction, 278.
 cannot be executed on Sunday, *ib.*
 where offender already in custody, 279.
 in force till return day, 247, 281.
 blanks in, 387.
 recitals in, 411.
 protection to constables, 249, 424—436.
 demand of, from constable, 427.
 copy of, to be furnished, to party, *ib.*
 sufficient, if furnished before action, 428.
 proof of, 416.
 suspension of, 245.
 sale under void, 249, n. (y), 320, n. (l).
Forms of, 543.
And see COMMITMENT—DISTRESS.

WEARING APPAREL, protected from distress, 255.

WIFE. *See* FEME COVERT.

"WILFULLY," when necessary to allege act to have been done, 150, n. (o), 160, 181, n. (n).

WITHDRAWAL of charge. *See* ABANDONMENT.

"WITHIN," effect of, in reckoning time, 68, and *ib.*, n. (i).

WITNESS,

- compelling attendance of, 119.
- when out of jurisdiction of justice, 120, 498.
- refusal of, to attend, 119, 120.
- to be examined, *ib.*
- summons of, must be signed by justices, *ib.*
- ordering out of court, 111, n. (l).
- competency of, 120.
- meaning of "credible witness," 119, n. (r).
- informer is competent, 121.
- party charged with "criminal" offence is not, *ib.*
- discharging co-defendant so that he may give evidence, 121, n. (b).
- calling co-defendant as witness, 121, n. (b).
- husband or wife of party charged, 126.
- must be examined in presence of the defendant, 124.
- and in presence of magistrate, 125.
- and upon oath, *ib.*
- oath to be administered before evidence given, 127.
- examination to be taken down in writing, 127.
- to be resworn if evidence has been taken in defendant's absence, 126.
- not necessary to be resworn where defendant confesses, *ib.*
- party acting as advocate, and being also, 111, n. (o).
- evidence not stated on face of conviction, 143.
- Forms* of summons to, 542.
- Forms* of writs of subpoena, 584, 585.
- Form* of commitment of, 544.

WORDS,

- action against justice for, 401.
- criminal information on behalf of justice for words spoken against him, 418, n. (r).

WRITING,

- information when necessary to be in, 82.
- adjudication, when not required to be in, 168, n. (b).
- order is made when verbally pronounced, 232.
- commitment must be in, 268, 395.
- detention in custody until return of warrant of distress may be by parol, 268.

WRITS OF SUBPCENA,

Forms of, 584.

YEAR, how reckoned, 61.

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